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Human rights bodies and mechanisms

Summary of discussions of the Forum on Business and Human Rights

Note by the Secretariat

In accordance with Human Rights Council resolutions 17/4 and 26/22, the third annual Forum on Business and Human Rights was held in Geneva from 1 to 3 December 2014. The Forum was chaired by Mo Ibrahim, and held under the guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Chair of the Forum prepared a summary of the discussions of the Forum (A/HRC/FBHR/2014/3).

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Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the right to education, Kishore Singh

Protecting the right to education against commercialization*

Summary

The present report is submitted pursuant to Human Rights Council resolutions 17/3, 23/4 and 26/27. The Special Rapporteur looks with concern at the rapid increase in the number of private education providers and the resulting commercialization of education, and examines the negative effects of this on the norms and principles underlying the legal framework of the right to education as established by international human rights treaties. He highlights the repercussions of privatization on the principles of social justice and equity and analyses education laws as well as evolving jurisprudence related to privatization in education. Finally, he offers a set of recommendations on developing effective regulatory frameworks for controlling private providers of education and safeguarding education as a public good.

* Late submission.

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I. Introduction

1. During the past decade there has been a rapid increase in the number of private providers of education in many developing countries, with many schools and educational establishments not being registered and being funded and managed by individual proprietors or enterprises. Such providers are distinct from other non-State actors, such as religious institutions, non-governmental organizations (NGOs), community-based groups, foundations and trusts. As a result, education is being commercialized and for-profit education is flourishing as an attractive business, with scant control by pubic authorities. In the present report, the Special Rapporteur looks at the rapid growth in private providers, which is resulting in the commercialization of education, and examines the negative effects of such commercialization on the norms and principles and legal frameworks underlying the right to education as established by international human rights treaties. He also highlights the repercussions of privatization on the principles of social justice and equity, underlining the need for safeguarding education as a public good.

2. Building upon his 2014 report to the General Assembly (A/69/402), the Special Rapporteur analyses education laws and evolving jurisprudence related to privatization. Finally, he offers a set of recommendations for developing effective regulatory frameworks for controlling private providers in education, in keeping with State obligations on the right to education as laid down in international human rights conventions.

II. Recent activities carried out by the Special Rapporteur

3. During the reporting period, the Special Rapporteur undertook missions to Algeria and Bhutan. In his 2014 report to the General Assembly, he wrote about the negative impact of private providers on the norms and principles of education, the underlying legal framework of the right to education and the importance of preserving education as a public good.

4. Since his last report, the Special Rapporteur has participated in a number of public events on education and continued collaborating with States, international organizations and NGOs.

5. On 16 and 17 April 2014, he was a panellist at the briefing for delegates on the post-2015 development agenda organized by the United Nations Institute for Training and Research (UNITAR) in New York, where he spoke on education.

6. On 6 May, he gave the opening address at a colloquium on lifelong learning organized by the education faculty of Mohammed V University in Rabat.

7. From 12 to 14 May, in Muscat, he participated in a meeting entitled "Education for all and the post-2015 development agenda", organized by the United Nations Educational, Social and Cultural Organization (UNESCO) in cooperation with the Government of Oman. During the ministerial and leaders' session, he highlighted key issues and challenges.

8. On 14 May, he participated in a briefing for delegates on the post-2015 development agenda organized by UNITAR in Geneva. As a panellist, he talked about education and participated in a dialogue with participating delegates.

9. On 16 May, he addressed the opening of the event on global citizenship education entitled "Enabling conditions/perspectives", co-organized by UNESCO and the Permanent Delegation of Austria to UNESCO.

10. On 11 June, he participated in a side event hosted by the International Organization for the Right to Education and Freedom of Education on his report to the Human Rights Council.

11. On 12 June, he spoke at a side event on privatization in education, hosted by Portugal and the Global Initiative for Economic, Social and Cultural Rights, and attended an expert meeting.

12. On 17 June, on the occasion of the twenty-sixth session of the Human Rights Council, he participated in a panel discussion on the right to education and skills development, hosted by the Permanent Missions of Portugal and Qatar.

13. On 20 June, he attended a side event hosted by Tunisia on the resolution related to the repatriation of funds of illicit origin.

14. On 7 July, he participated as a keynote speaker in a day-long discussion organized by the Committee on the Elimination of Discrimination against Women on the drafting of a general recommendation on the right of women and girls to education.

15. On 12 July, he addressed the fifty-sixth session of the Conference of Ministers of Education of the Francophonie, held in Abidjan on the theme of inclusive quality education for all in Francophonie and on related challenges, priorities and perspectives.

16. On 25 July, he was a panellist in a round table on freedom and democracy without violence, and made concluding remarks at the session on the philosophical foundations of human rights, organized by the Collège Universitaire Henry Dunant in Geneva.

17. On 25 August, he gave a lecture on the post-2015 development agenda and the right to education at the Faculty of Legal Studies, South Asian University, New Delhi.

18. On 26 August, he addressed officials of various States of India during an orientation workshop on the Right to Education Act of India at the National University for Educational Planning in New Delhi.

19. On 2 September, he gave a special lecture at the Indian Society of International Law in New Delhi entitled "The right to education as a human right: challenges and prospects for India".

20. On 21 October, he participated in a side event in New York hosted by Transparency International and Penal Reform International on corruption and its impact on human rights.

21. On 28 October, he was invited by the Open Society Foundation to speak on his report to the General Assembly on privatization and the right to education.

22. From 4 to 6 November, he participated in the 2014 World Innovation Summit in Education, held in Doha on the theme "Imagine-create-learn: creativity at the heart of education".

23. From 10 to 12 November, he attended the World Conference on Education for Sustainable Development, held in Aichi-Nagoya, Japan, where he was a panellist at a plenary session.

24. On 20 November, he gave the inaugural address at a meeting on service learning organized by the University of Rioja, Spain.

25. On 25 November, he gave a lecture at Queens University in Belfast entitled "State responsibility for provision of quality education to every child".

26. From 28 to 30 November, he attended the World Human Rights Forum in Marrakech, Morocco, where he interacted with a large number of civil society

organizations. In the address he gave during the closing ceremony, he focused on the right to education.

27. On 16 December, he addressed the issue of quality education at the 2014 International Conference of Non-Governmental Organizations, which was devoted to the post-2015 development agenda and was hosted by UNESCO in Paris.

28. From 9 to 11 January 2015, he co-chaired a plenary session on the implementation of international law held in the context of the World Congress on International Law. The session was organized by the Indian Society of International Law in New Delhi.

29. On 15 January, he was a lead speaker at an event in New Delhi organized by the Right to Education Forum in cooperation with UNESCO in connection with his 2014 report to the General Assembly.

30. On 23 February, he spoke at the opening session of the World Assembly of the Global Campaign for Education, held in Johannesburg, South Africa, at which he underlined the need to safeguard education against the forces of privatization. Participants in the World Assembly aligned themselves fully with the recommendations made in his 2014 report to the General Assembly.

31. On 18 March, he participated in a round table on the theme "Privatization, education and social justice", held at the Institute of Political Sciences in Paris to examine issues in privatization in education. He also gave a public lecture entitled "Privatization in education: a new challenge for human rights in developing countries".

32. On 20 March, he was a panellist in an event on the implementation of economic and social rights and State obligations under human rights conventions organized by the Permanent Mission of Fiji to the United Nations Office at Geneva, and spoke on challenges of effective realization of the right to education and its interface with right to development.

33. On 26 March, he gave a keynote address focusing on preserving education as a public good in the face of privatization at a session on the right to quality education and the post-2015 development agenda, organized on the occasion of the World Social Forum in Tunis.

34. On 15 April, he delivered a statement at the opening of the general discussion on the right to education of persons with disabilities, organized in Geneva by the Committee on the Rights of the Persons with Disabilities, with a view to formulating a general comment on article 24 (right to education) of the Convention on the Rights of the Persons with Disabilities.

35. On 22 April, he gave a lecture at Cornell Law School on the negative effects of privatization in education, highlighting State obligations and the need to preserve education as a public good.

III. Commercialization of education and its unfettered proliferation

36. A recent in-depth study on privatization has shown that education as a sector is increasingly being opened up to profit-making and trade, and to agenda-setting by private, commercial interests that conceptualize the learner as a consumer and education as a

consumer good.[1] The reconfiguration of public services within neoliberal globalization has placed education squarely in the headlamps of the private sector[2] and international trade agreements such as the General Agreement on Trade in Services and the Trade in Services Agreement.[3] Low-fee private schools in developing countries are a glaring example of the commercialization of education, characterized as "edu-business".[4] A potentially very large proportion of these schools are unregistered.[5]

37. These developments have their genesis in the education sector strategies of the World Bank, which have stressed since the 1980s the key role of the private sector in education and compelled developing countries to initiate significant cuts under structural adjustments to their public services, including education. The most recent World Bank education strategy, the education sector strategy 2020 (released in 2011), gives increased prominence to private-sector engagement in education; as does the Global Partnership for Education.[6]

38. Promoting for-profit education, the International Finance Corporation considers laws as financial hurdles and provides guidance to private providers of education to be "very profitable and flourishing enterprises".[7] This is blatantly disrespectful of the human rights obligations of international bodies, including the World Bank, as described in general comment No. 13 (1999) on the right to education of the Committee on Economic, Social and Cultural Rights.

39. The commercialization of education and its unfettered liberalization, open to operators for lucrative purposes or objectives, is contrary to international human rights law. The introduction of private, for-profit education into the national education landscape has a number of serious repercussions.[8] Privatization leads to shrinking public investment. Its negative effects on education must receive foremost consideration in public policies, bearing in mind that education is a social good.

IV. Widespread concern with the baleful effects of privatization in education

40. A number of scholars have critically examined the neoliberal model of schooling, which is characterized by "State withdrawal in favour of privatization" and "market-

[1] Ian Macpherson, Susan Robertson and Geoffrey Walford, eds., *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia* (Oxford, Symposium Books Limited, 2014).

[2] See concept note for the Commonwealth Ministerial Working Group on the Post-2015 Development Framework for Education (2013).

[3] See Education International, "Education is not a commodity", 6 May 2015. Available from http://ei-ie.org/en/news/news_details/3517.

[4] See Geetha B. Nambissan, "Private schools for the poor: business as usual?", *Economic & Political Weekly*, 13 October 2012, vol. xlvii, No. 41, p. 51.

[5] Laura Day Ashley et al., "The role and impact of private schools in developing countries" (United Kingdom of Great Britain and Northern Ireland, Department of International Development, 2014) p. 18.

[6] **Error! Hyperlink reference not valid.**

[7] See *Education investment guide: a guide for investors in private education in emerging markets* (2010). Available from http://documents.worldbank.org/curated/en/2010/07/18806919/education-investment-guide-guide-investors-private-education-emerging-markets.

[8] See http://blogs.ft.com/beyond-brics/2014/12/17/for-profit-school-chains-educate-africas-poor/.

anchored conceptions of schooling" — a departure from decades of the welfare state.[9] The work of numerous civil society organizations expressing concern about the negative effects of privatization in education must be commended.[10]

41. UNESCO and the International Organization of la Francophonie have expressed concern with sweeping privatization in education reducing education to a commodity: "With diversification in the field of education, the private providers — international or local — are more and more numerous. International consortiums have [become] specialized in 'selling' education. A number of local figures, including many teachers and even educational authorities, are creating schools for profit, turning to rather wealthy families with slogans extolling the quality [of the school] or are turning towards the disadvantaged public with altruistic slogans, which often hide the profit or political character of their endeavours. One can observe, above all, the emergence of a quasi-market phenomenon".[11]

42. Private providers undermine the right to education, both as an entitlement and as empowerment.

A. Privatization and the right to education as an entitlement

43. Entitlement to education in terms of universal access is an essential prerequisite for the exercise of the right to education. However, privatization breeds exclusion, as those who are disadvantaged are unable to access private schools. This aggravates existing disparities in access to education, further marginalizing the poor. Furthermore, voucher schemes purported to provide economically disadvantaged parents with the means to select a private school in fact promote group differentiation.[12]

44. Often, the criterion for admission to private institutions is not merit or capacity, but rather the ability to pay. This is in contravention of the basic norms set out in the Universal Declaration of Human Rights and the international human rights conventions.

B. Privatization and the right to education as empowerment

45. Advertising that portrays private schools as providers of better-quality education lures ill-informed students and parents. The phenomenon of low-fee private schools is projected as an affordable means of obtaining quality education. However, there is no evidence that "private schools do anything different to induce more learning than do public

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[9] See J. Zajda, ed., *Decentralization and Privatization in Education: the Role of the State* (Dordrecht, Springer, 2006).

[10] See report on Privatisation in Education, organized by the Global Initiative for Economic, Social and Cultural Rights, together with the Privatisation in Education Research Initiative on the occasion of the twenty-sixth session of the Human Rights Council, June 2014; www.ei-ie.org/en/news/news_details/3306; interventions at the Global Campaign for Education World Assembly, Johannesburg, 23–27 February 2015; www.opensocietyfoundations.org/events/un-special-rapporteur-kishore-singh-privatization-education; http://globalinitiative-escr.org/advocates-from-91-countries-call-on-governments-to-stop-education-profiteers/.

[11] "La régulation du système éducatif: une obligation pour atteindre l'équité et améliorer la qualité", paper prepared by the International Institute for Educational Planning of UNESCO, the International Organization of la Francophonie, Wallonie Bruxelles, 2014, p. 7.

[12] Ian Macpherson, "Interrogating the private-school 'promise' of low-fee private schools" in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Ian Macpherson, Susan Robertson and Geoffrey Walford, eds. (Oxford., Symposium Books, 2014), p. 21.

schools ... many private schools do worse than public schools".[13] Quality is also compromised by the high prevalence of underqualified teachers or instructors employed, on a temporary basis, in private schools run by small and large enterprises. This is in direct contravention with the UNESCO-International Labour Organization recommendation on status of teachers, which lays down a normative framework for the teaching profession and applies to teachers of both public and private schools.

46. According to the Organization for Economic Cooperation and Development (OECD), "public schools with comparable student populations offer the same advantages" as private schools.[14] These schools take credit for academic success, yet having educated wealthy parents is the most determining factor in such success.[15] Generally, private schools are chosen owing to the lack or poor quality of public schools.

V. Internationai legal framework for the right to education

47. The State is primarily responsible for respecting, fulfilling and protecting the right to education. The liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions and the liberty of individuals and bodies to establish and direct educational institutions provided for in article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights is not unfettered. Such freedom in education is subject to compliance with minimum standards in education, to which all private educational institutions are required to conform.[16] The failure to ensure that private educational institutions conform to the minimum educational standards required in articles 13 (3) and (4) constitutes a violation of the right to education.[17]

48. The UNESCO Convention against Discrimination in Education contains similar provisions. It provides that the objective of the establishment or maintenance of private educational institutions should not be to secure the exclusion of any group, but "to provide educational facilities in addition to those provided by the public authorities" and that "the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level".

49. Education is not a privilege of the rich and well-to-do, it is an inalienable right of every person. The State is both guarantor and regulator of education. The provision of basic education, free of cost, is not only a core obligation of States, it is also a moral imperative.

50. The Special Rapporteur considers it essential, when looking at privatization in education, to bear in mind State obligations in respect of the right to education: States must ensure promote, respect and fulfil the right to education.[18]

51. State responsibility for providing basic education free of charge is established in human rights law. According to the interpretation of the Committee on Economic, Social and Cultural Rights, under article 13 of the Covenant, States are regarded as having

[13] See Zajda, *Decentralization and Privatization*, pp. 9 and 10.

[14] OECD, "Private schools: Who benefits?", in *PISA in Focus 7*. Available from www.oecd.org/pisa/pisaproducts/pisainfocus/48482894.pdf.

[15] Available from www.statcan.gc.ca/daily-quotidien/150331/dq150331d-eng.htm. See also Global Monitoring Report p. 216.

[16] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 54.

[17] Ibid., para. 59.

[18] The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide (Committee on Economic, Social and Cultural Rights, general comment No. 13, paras. 46 and 47).

principal responsibility for the direct provision of education in most circumstances: States parties to the Covenant recommend, for example, that the "development of a system of schools at all levels shall be actively pursued".[19] States have an "unequivocal obligation" to provide primary education free of charge to all, with a detailed plan of action to progressively improve provision, under article 14 of the Covenant.[20] The Committee has stressed that, under article 13, States are regarded as having principal responsibility for the direct provision of education in most circumstances.[21]

52. According to a report by the United Nations Children's Fund (UNICEF), "only the State ... can pull together all the components into a coherent but flexible education system".[22] Any State in which a significant number of individuals are deprived of the most basic form of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être.[23]

53. It is an established principle of human rights law that the State remains responsible for its obligations, even when they are privatized. The European Court of Human Rights has held that, under the European Convention on Human Rights, a State cannot absolve itself from responsibility by delegating its obligations to private school bodies.[24] This position is reinforced by the Guiding Principles on Business and Human Rights, which emphasize that when States delegate their responsibilities to businesses, they remain responsible for ensuring that their human rights obligations are being met by those companies.

54. The State remains primarily responsible for education on account of international legal obligations and cannot divest itself of its core public service functions. As the Supreme Court of the United States of America stated in the historic judgement in *Brown v. Board of Education* (1954), "providing public schools ranks at the very apex of the function of a State" and "education is perhaps the most important function of State and local governments".[25]

55. Yet, instead of controlling the growth of privatized, for-profit education, Governments often support private providers through subsidies and tax incentives, thus divesting themselves of their primary public function. As a result, rather than supplementing government efforts, private providers are supplanting public education and commercializing education in the process.

VI. Negative impacts of privatization on fundamental principles and norms underpinning the right to education

56. Privatization of education, where it has a negative impact, violates many of the legal and moral norms upon which the right to education is established.

[19] Ibid., para. 48 citing art. 13 (2) (e).

[20] Committee on Economic, Social and Cultural Rights, general comment No. 13, para. 9.

[21] Ibid., para. 48.

[22] UNICEF, *The State of the World's Children — Education* (New York, 1999), p. 63.

[23] See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of State parties' obligations, para. 10.

[24] *Costello-Roberts v. the United Kingdom*, judgement of 25 March 1993, paras. 27 and 28.

[25] *Wisconsin v. Yoder*, 406 U.S.205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972), as cited "Students Rights", in *Education Law*, Charles J. Russo and Ralph D. Mawdsley, eds., Education Series (New York, Law Journal Press, 2002).

A. Non-discrimination

57. Discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is prohibited in international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)). Private providers do not respect the prohibited grounds of discrimination and violate fundamental principles of non-discrimination in human rights law: social origin, economic condition, birth or property are the preponderant factors in allowing access to private schools. It is the obligation of States to ensure the right to education without discrimination or exclusion. Privatization in education also has repercussions on girls' right to education, as families prioritize the education of boys over girls. Any scheme of "vouchers purported to provide economically disadvantaged parents the means to select a private school in fact promotes group differentiation".[26]

B. Equality of opportunity in education

58. Privatization widens disparities in access to education. Private providers disregard the fundamental principle of equality of opportunity in education common to almost all international human rights treaties (A/HRC/17/29 and Corr.1). Inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with economic condition, wealth or property becoming the most important criterion in access to education.

59. States have obligations to ensure that the liberty of providing education set out in article 13 (4) of the International Covenant on Economic, Social and Cultural Rights does not lead to extreme disparities of educational opportunity for some groups in society.[27] Pursuant to Human Rights Council resolution 17/3, they should give full effect to the right to education by, inter alia, promoting equality of opportunity in education in accordance with their human rights obligations.

C. Social justice and equity

60. Education is instrumental in "promoting development, social justice and other human rights".[28] Privatization stymies the principle of social justice, which is at the core of the global mission of the United Nations to promote development and human dignity. Low-fee private schools "not only constrain social justice in education, favouring access for some over others, but also social justice through education" as their raison d'être is "monetizing access" to education. This aggravates inequality through the structural exclusion of certain groups, entrenching a neoliberal vision of society.[29]

61. In the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want" (General Assembly resolution 66/288, annex), the General Assembly underlined the importance of the right to quality education and expressed the resolve of the international community to work for a world that is just,

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[26] Macpherson, "Interrogating the private-school 'promise'", p. 21.

[27] See Committee on Economic, Social and Cultural Rights, general comment No. 13 on the right to education, para. 30.

[28] See Transparency International, *Global Corruption Report: Education* (Abingdon, Oxon, Routledge, 2013). See also Jacques Hallak and Muriel Poisson, "Corrupt schools, corrupt universities: what can be done?" (International Institute for Educational Planning, UNESCO Publishing, 2007).

[29] Macpherson, "Interrogating the private-school 'promise'", p. 296.

equitable and inclusive. The Special Rapporteur finds it difficult to reconcile this vision with the social implications of privatizing education. Unless social policy becomes transformative in a spirit of (re)distributive justice, progress towards development goals is at risk and violent conflict may result.[30]

D. Preserving and strengthening education as a public good

62. Privatization adversely affects education as it "recast[s] education not as a public or societal good grounded in democratic principles of justice and equal opportunity but as an individual, atomized and personalized private good".[31] Private, for-profit schools disregard basic norms and standards and undermine education as a societal good.

63. The Special Rapporteur has consistently underlined the importance of preserving education as a public good, while promoting the view that the State is the custodian of quality education as a public good. Understanding the multifaceted role of the State in education is a precondition for critically analysing educational institutions and their responsibility for preserving and strengthening education as a public good.[32]

64. Safeguarding education as a public good should be an overriding concern in considering recommendations and analyses presented in the report of the Intergovernmental Committee of Experts on Sustainable Development Financing submitted to the General Assembly at its sixty-ninth session (A/69/315).

VII. Differentiated public policy responses towards non-State providers of education

65. Alternative schools for linguistic, cultural or religious reasons in line with article 13 of the International Covenant on Economic, Social and Cultural Rights have a recognized place in education systems and are important in maintaining diversity and protecting minorities within countries.

66. There are other important avenues for meeting demands in education while a State pursues the progressive realization of the right to education. Not-for-profit, NGO, community and religious schools all have different motivations, dynamics and outcomes. Governments can, as in Brazil, categorize various non-State providers in education. In Spain, contractual arrangements[33] between a region and a private school establish mutual rights and obligations. Public support to such educational establishments must, as provided in the Constitution of Cabo Verde, for example, be subject to pursuing the public interest.

67. Public policies can help communities and NGOs to establish schools. Community schools can play a meaningful complementary role in the realization of the right to education. Such schools may be sources of innovation, leading to new teaching methods, curricula or school management practices that can improve the public system. As in the

[30] Esuna Dugarova and Tom Lavers, "Social inclusion and the post-2015 sustainable development agenda", paper prepared for UNITAR briefing for delegates on the post-2015 development agenda and social inclusion (United Nations Research Institute for Social Development, April 2014), pp. 2 and 3.

[31] Macpherson, "Interrogating the private-school 'promise'", p. 295.

[32] See Zajda, *Decentralization and Privatization*, introduction.

[33] Spain, Organic Law 8/2013 for the improvement of quality of education.

case of the Bodh Shiksha community schools in India,[54] they can also be integrated into public schools. Ensuring quality in education is important in efforts to ensure "socialized" education, as in Viet Nam, where efforts are made to increase financial and other forms of support to schools in the community. Collaborations looking to pursue the social interest in education can lead to public education systems being reinforced.[55]

68. Moreover, educational establishments set up for philanthropic purposes, which are not profit-driven but promote education as a societal good, are valuable for generating social support for education. Public policies can promote the foundation of public utilities devoted to the cause of education. Corporate social responsibility can support education development and must be fully harnessed. All those valuing education as a public good and a social cause as opposed to for-profit schools can be encouraged by an enabling environment and good governance for developing education, in such innovative ways as special trust funds created for the purpose of maximizing national investment in education.

VIII. Private providers and national legislation

69. States remain primarily responsible for protecting the right to education. Many countries have national legislation with provisions applicable to non-State providers of education. In most cases, it is broadly conceived, covering freedom for religious and moral education in accordance with article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights and other international human rights conventions. Except in a few cases, such provisions do not cover privatization in all its manifestations and do not adequately address issues specifically related to the commercialization of education. Laws on private providers exist in only a few countries.

70. With little or no effective control, the negative effects of privatization on the right to education in several countries can already be seen. For example, a phenomenal increase in low-cost private schools in Pakistan, which now enrol over 40 per cent of all students, has exacerbated inequities at all school levels, thereby heightening instabilities and violence in conflict-affected provinces.[56] In Nepal, private providers, who can register as companies and sell education services, continue to flout government guidelines.[57] The growth of fee-paying, for-profit schools in Morocco is creating a system that privileges those with means, with the risk of developing a two-speed education system.[58] In South Africa, where private schools have become increasingly popular among the middle classes,[59] the national human

[54] See Coalition for Community Schools, "Community Schools: Partnerships for Excellence". Available from www.communityschools.org/assets/1/Page/partnershipsforexcellence.pdf. See also www.bodh.org/stakeholder-development.php.

[55] See Ta Van Tuan and Duong Thi Viet An, *Socialization Policy and Access of the Rural Poor to Education in Vietnam*. Available from www.periglobal.org/role-state/document/socialization-policy-and-access-rural-poor-education-vietnam.

[56] See Irfan Muzaffar, Campaign for Quality Education in Pakistan, "World Bank funded private schools in Pakistan undermining equity?", 2 December 2013.

[57] See Chandra Sharma Poudyal, "Nepali private schools and tolerated illegality", *Setopati*. Available from http://setopati.net/opinion/1792/. See also the parallel report submitted for the universal periodic review of Nepal by National Campaign for Education-Nepal, the Global Initiative for Economic, Social and Cultural Rights, the Sciences Po law school Clinic, and partners. Available from http://bit.ly/1Gke0dn.

[58] See Global Initiative for Economic, Social and Cultural Rights, Morocco, "Privatisation in education in Morocco and the right to education: summary factsheet". Available from http://goo.gl/MTGua8.

[59] See www.news24.com/SouthAfrica/News/Curro-race-row-sparks-probe-at-private-schools-20150203.

rights commission recently launched investigations into the for-profit Curro Foundation School.[40]

71. Omega International, a chain of for-profit, low-fee private schools run according to a business model[41] in Ghana, requires fees representing up to 40 per cent of poor households' income[42] and makes a mockery of education by not following the national curriculum[43] and by employing unqualified instructors.[44] The Special Rapporteur notes that providing tax relief or subsidies to private schools, rather than establishing good-quality public ones, violates the Constitution of Ghana, which provides that every person shall have the right, at his own expense, to establish and maintain a private school or schools.

72. Like Ghana, Kenya and Uganda too are allowing education to be commercialized and are encouraging for-profit schools, such as the Bridge International Academies. This violates these States' international legal obligations to provide free basic education for all. It also contravenes the Children Act 2001 of Kenya (reinforced by the Basic Education Act 2013), by which every child is entitled to free basic education and the Government is responsible for providing such education.

73. Chile has embarked on a transformative, regulatory approach to undoing the devastating impact of 30 years of market-based policies in education, which have led to high levels of school segregation and stratification.[45] The Special Rapporteur hopes the current reforms will dismantle the underlying neoliberal economic policies and restore education as a public service through new, socially just and equity-focused legislation.[46] He also hopes that the negative consequences of privatization in Chile will dissuade countries such as Peru from following that path. Nearly 25 per cent of Peruvian schools are private and, rather than protecting the public interest in education, Peru has issued legislative decree No. 882, which leaves it to the national consumer protection agency to regulate private schools.

74. In Sweden, the Government launched a major review to abolish the motivation of profit for providing education after falling in the Programme for International Student Assessment league tables and intends to bring in legislation by 2016 that would force private companies to reinvest all profits back into their schools. "The Swedish free school experiment shows that allowing for-profit providers into the school market has not led to increased performance and improved schools, but instead permitted another vested interest into education".[47]

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[40] See http://pod702.co.za/Eyewitnessnews/docs/150519GDECurroReport.pdf.

[41] See www.periglobal.org/subject/for-profit-schools.

[42] See Curtis Reip, "Omega Schools Franchise in Ghana: "affordable" private education for the poor or for-profiteering?" in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Macpherson et al., eds., pp. 259–278.

[43] See http://globalinitiative-escr.org/wp-content/uploads/2014/08/260814-Education-Privatization-in-Ghana-CRC-pre-session-report_FINAL.pdf.

[44] See ibid.

[45] See "Decommodifying Education in Chile", 2014. Available from www.educationincrisis.net/blog/item/1122-decommodifying-education-in-chile?-bachelets-reforms-in-the-face-of-persistent-educational-inequalities.

[46] See "Sweeping reforms set to end for-profit education in Chile", 20 May 2014. Available from http://theconversation.com/sweeping-reforms-set-to-end-for-profit-education-in-chile-26406.

[47] See Richard Vaughan, "No return for Sweden's free schools", *TES Magazine*, 24 October 2014. Available from https://www.tes.co.uk/article.aspx?storyCode=6447747.

75. As has been done in law in some countries,[48] conditions under which private schools can operate must be fixed by the State. In the Netherlands, for-profit, privately funded schools, rather than private schools established for a specific religion, philosophy or educational ethos, must meet the conditions laid down and obtain approval from the education inspectorate if they wish to provide education to students of compulsory school age.

A. Education as a public good

76. The concept of education as a public good can wield greater force when enshrined in the national legal system. National legislation in several countries embodies this concept, and must become more common. For example, the Constitution of Ecuador, which ushered in a new human rights-based model for the State (see A/HRC/WG.6/13/ECU/1, para. 4), establishes that education shall respond to the public interest and will not be subservient to individual or corporate interests.

77. Similarly, the Act on National Education of 2006 in Argentina provides that education and knowledge are public goods guaranteed by the State and that private management will be based on objective criteria of social justice. The law in the Dominican Republic stipulates that the State must primarily promote education as a "common good".[49] In some countries, private education is required to be a service of "public utility",[50] which thus forbids for-profit education. The concept of education as a social good is also reflected in the Constitution of Brazil.

B. Abolishing for-profit education

78. For-profit education is contrary to the concept of education as a public good, and the Special Rapporteur would like to mention national legislation in several countries that outlaws for-profit schools. For example, the Education Act of the Bahamas[51] establishes that "the school shall not be established or maintained for the private profit of any person or persons". In Qatar, private schools are required to be authorized by the Supreme Education Council and "shall not be profit-oriented".[52] The Education Law of China provides that "educational activities must conform with the public interest of the State and society"[53] and that "no organization or individual may operate a school or any other type of educational institution for profit".[54] National legislation and policies in Finland give paramount importance to education as a public function of the State and as a public good. The law in Finland states that "basic education may not be provided in pursuit of financial gain".[55]

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[48] For example, Law No. 2004/022 (2004) of Cameroon (art. 5); the Angolan Education Law of 31 December 2001, Law No. 1/19 of Burundi (art. 4).

[49] Organic Law of Education No. 66 of 1997 (art. 7).

[50] Constitution of Gabon (as revised in 2011) (art. 1, para. 19), the Framework Law No. 14/004 (2014) of the Democratic Republic of the Congo (art. 137), and Law No. 2004/022 (2004) of Cameroon (art. 2).

[51] See http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1962/1962-0015/EducationAct_1.pdf.

[52] Law No. 11 pertaining to independent schools (2006) (art. 2).

[53] See www.chinaeducenter.com/en/edulaw/law1.php.

[54] See www.chinaeducenter.com/en/edulaw/law3.php.

[55] Section 7 of the Basic Education Act 628/1998. See www.finlex.fi/en/laki/kaannokset/1998/en19980628.pdf.

79. For-profit education is illegal in some countries where the provision of basic education is a constitutional obligation, as in Brazil and South Africa. The Special Rapporteur would like to commend all those countries where for-profit education is forbidden and to appeal to all countries to abolish for-profit education. He considers that it is crucial to generalize this abolition in legislation and public policies, and to establish effective oversight mechanisms.

C. Regulating school fees

80. As many private providers seek to maximize the profits from education, rules and regulations to control school fees must be imposed. Otherwise, the economic accessibility of education for specific groups of the population is endangered.[56] Public authorities can establish maximum permissible fees to be charged by private providers, with a ban on raising those fees without prior approval. The Guidelines for Private Schools in Bhutan, for instance, require private schools to set and declare yearly lump-sum school fees for a student for one academic year. In Cameroon, the fees in private schools are fixed by the State under a contract, in consultation with providers of education.[57]

D. Minimum standards and human rights values

81. The commercialization of education necessarily involves the pursuit of material values to the detriment of the humanist mission of education. Private schools propagate a commercial value system and establish a learning system devoid of cultural diversity, as they cater to particular social strata. The "cultural-valuational currency" they breed is derogatory to the "moral worth" of the very poor.[58] Privatization eclipses a holistic approach to education: learning to know, learning to do, learning to live together and learning to be.[59]

82. The humanistic mission of education can be strengthened and supported through laws and policies. State policy in the sphere of education should be based on the humanistic nature of education, giving primacy to common human values and the public character of education, as is done in France and Greece, among other countries.

E. Some exemplary regulatory systems

83. In developing regulatory frameworks, States can draw upon existing regulatory systems and approaches. Algeria, for example, is noteworthy for controlling private educational establishments: such establishments are subject to prior authorization by the Minister of Education and the conditions of their creation and opening are controlled by strict rules. They are required to follow official programmes and bear civil responsibility towards students and the educational personnel employed. At the time of establishment, and each year thereafter, they must declare their sources of financing, including gifts and legacies, and cannot receive any financing grant or donations from national or foreign

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[56] See Fons Coomans and Antenor Hallo de Wolf, "Privatization of Education and the Right to Education", in *Privatisation and Human Rights in the Age of Globalisation*, Koen De Feyter and Felipe Gomez Isa, eds. (Antwerp – Oxford, Intersentia, 2005), pp. 239–240.

[57] Law No. 2004/022 (2004) of Cameroon (art. 21).

[58] Macpherson, "Interrogating the private-school 'promise'", p. 294.

[59] "Learning: the treasure within — report to UNESCO of the International Commission on Education for the Twenty-First Century" (UNESCO Publishing, 1996), pp. 20–21.

associations, institutions or organizations without prior approval by the Minister of Education. Finally, the regulations provide for sanctions in case of non-conformity to the rules by private educational establishments.[60]

84. In Japan, the School Education Act fixes minimum standards in education with curriculum guidelines, and the ordinance for the enforcement of the Act provides a basis for application of the guidelines. The country's Private Schools Act[61] lays down requirements for the establishment and management of private schools. Failure to follow specific regulations is punishable by sanctions of a civil nature.

85. Singapore is an especially noteworthy example of how States can effectively regulate private education providers with sanctions in cases of abusive practices. According to the country's Private Education Act, private educational establishments must be registered and abide by very strict quality standards and norms. They can be refused permission to operate if the private education institution is not in the public interest. The Act establishes duties and management accountabilities. It provides that "any registered private education institution which contravenes any requirement or restriction imposed ... shall be guilty of an offence" and makes acting "fraudulently or dishonestly" or "misleading" the public punishable by law.[62] The Act contains comprehensive provisions on inspection, enforcement and offences, as well as a detailed section on offences by corporate bodies, including unincorporated associations that, when found guilty of an offence, shall be liable to be prosecuted and punished accordingly.[63]

IX. Justiciability of the operations of private education providers

86. International and regional human rights monitoring mechanisms have noted that States have an obligation to protect individuals from human rights abuses committed by private parties. Public accountability of privatized schools and availability of remedies and recourse from their decisions should be specifically and unambiguously provided for by law. The regulatory role of the State is clearly within the scope of the obligation to protect.[64] Existing jurisprudence enables a better understanding of the obligations that the right to education imposes upon private providers.

87. A number of court rulings worldwide have established that private providers in education are accountable to the State and to the public. The Supreme Court of Nepal found that fees charged by private providers of education were increasing social and economic disparity. It ruled that the educational authorities had to devise reform programmes to regulate private schools: regulating fees, prohibiting the sale of unregistered and overpriced textbooks and limiting the number of private schools being accredited.[65]

88. In another case, the South African Constitutional Court found that the primary positive obligation with respect to the right to education rests on the State and that private

[60] Ordinance No. 05-07 of 23 August 2005.
[61] Available from www.japaneselawtranslation.go.jp/law/detail/?id=2301&vm=04&re=01.
[62] Private Education Act No. 21 (2009) of Singapore.
[63] Ibid.
[64] See Coomans and de Wolf, "Privatisation", p. 255.
[65] See Open Equal Free, "Nepali Private Schools banned from raising fees". Available from www.openequalfree.org/archives/ed-news/nepali-private-schools-banned-from-raising-fees.

actors providing basic education have an obligation not to infringe on the students' right to education.[66]

89. In a landmark decision, the Supreme Court of India ruled that when the Government grants recognition to private educational institutions, it creates an agency to fulfil its obligation to enable the citizens to enjoy the right to education: "Charging a capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution".[67]

90. The Constitutional Court of Colombia ruled in 1997 that excluding pupils from schools on an economic basis only violates their enjoyment of the right to education.[68] The Court also ruled that because of the fundamental character of the right to education, private schools are bound by specific constitutional obligations.[69]

91. Courts in the United States have also ruled that using public money to fund private school tuition vouchers is unconstitutional, and that public money being so used should instead go to public schools.[70]

92. Independent judicial systems and independent human rights mechanisms are necessary for ensuring that laws and regulations are enforced. It is also important that judges be well-versed in the international obligations of States on the right to education. Regulations on private providers should be widely publicized so as to make them better known, especially among parents, teachers and community members and organizations, and should allow for any entity or individual to initiate legal action in cases of abusive or illegal practices by private providers. Supporting public interest litigation safeguarding the right to education against forces of privatization is also important.

X. Regulatory framework for governing private providers, centred on education as a public good

93. The commercialization of education by all kinds of for-profit operators or with objectives contrary to international commitments by States and national values must be stopped and sanctioned. Corruption by private providers continues owing to a lack of regulations and monitoring, oversight and control mechanisms. As a result, the delivery of primary or basic education can be made a family business by running a school in a private house. Furthermore, few Governments have satisfactory regulations on tutoring by private tutorial companies. Regulations for such companies are also necessary.[71]

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[66] See *Governing Body of the Juma Musjid Primary School and Others v Essay N.O. and Others*, case CCT 29/10 (2011), especially para. 57.

[67] See *Miss Mohini Jain v. State Of Karnataka And Ors*, AIR 1858, 1992 SCR (3) 658.

[68] Judgement C-560/97, ruling on a constitutional challenge to article 203 (partial) of Law No. 115 of 1994.

[69] Colombian Constitutional Court, case T-211/95, 12 May 1995.

[70] Ruling by Louisiana Supreme Court, May 2013. See www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/07/louisiana-supreme-court-rules-school-voucher-funding-unconstitutional/.

[71] See Mark Bray and Ora Kwo, "Regulating Private Tutoring for Public Good: Policy Options for Supplementary Education in Asia" (Bangkok, UNESCO Asia and Pacific Regional Bureau for Education, 2013).

94. A regulatory framework for private providers is thus of critical importance in setting out responsibilities and accountability requirements.[72] The corporate sector has a long track record of attempting to prevent government regulation and numerous corporations have sued Governments for trying to implement regulations that could harm their profits. Governments must be bold in regulating private operators, focusing on education as a public good. Regulations must ensure that education is accessible to all, works towards the broader public interest and reflects a broad humanistic notion of education.

95. It should be mandatory for private providers to be transparent[73] and to share with parents, teachers and community associations information regarding school functioning, performance and management. A regulatory framework should clearly spell out the duties and responsibilities of private providers vis-à-vis the community, students, teachers and society at large.

96. The importance of a regulatory framework has been recognized by the United States Supreme Court: even in the case of traditional private education, individual States have the power to reasonably regulate all schools, to inspect, supervise and examine them, their teachers and pupils and to ensure that teachers are of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship are taught and that nothing is taught that is manifestly inimical to the public welfare.[74]

97. The Special Rapporteur would like to emphasize the need for States to create a comprehensive regulatory framework to control private providers in education and uproot commercialization in education. He considers that such a framework can be developed by developing regulations that prescriptive, prohibitory and punitive.

A. Prescriptive regulations

98. Prescriptive regulations relate to the establishment and operation of private schools, setting minimum standards, including conditions for their recognition and operations, curriculum requirements, minimum qualifications for teachers, infrastructure standards and quality measures, and recognition of degrees or diplomas issued.[75] These are basic requirements for any institution. Such regulations describe reporting obligations, including performance measures and financial reporting, and require compliance with monitoring and oversight agencies.

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[72] See Global Campaign for Education, intervention at the World Assembly, February 2015. See http://campaignforeducation.org/en/news/global/view/623-representatives-from-91-countries-come-together-for-the-fifth-gce-world-assembly.

[73] See Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

[74] See *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 US 510 (1925). See also Kemerer and Maloney, "The Legal Framework for Educational Privatization and Accountability" 150 *West's Education Law Reporter* (2001) No. 598, pp. 589-590.

[75] See "Plaidoyer sur l'importance du rôle sur l'Etat dans la regulation de la qualité et de l'équité de l'éducation" in "Régulation par l'Etat de la qualité et de l'équité de l'éducation", paper prepared by the International Organization of la Francophonie, annex XII.

B. Prohibitive regulations

99. Regulations must ban for-profit education and prohibit fee-based discrimination because it creates and entrenches social and economic inequalities.[76] Prohibitive regulations can ban the registration of private schools as companies, the recruitment of unqualified teachers or those employed in public schools, the closure of schools during an academic year, indulgence in false commercial propaganda to lure insufficiently informed students and parents,[77] the charging of capitation fees and the extraction from students or parents of any undeclared financial contribution over and above the approved fee. Regulations must prohibit school selection on the basis of ability, social or ethnic origin, or any form of psychometric tests.

C. Punitive regulations

100. According to one scholar, "the failure to enforce and monitor the regulatory framework within which private schools are to function has left the educational landscape open to corrupt practice and manipulation".[78] In addition to being prescriptive and prohibitive, the regulatory framework should also be punitive, including withdrawal of operating licences for lack of compliance with regulations. This is necessary to control non-compliance with regulations as well as to take action against private providers who indulge in fraudulent and corrupt practices, such as false declarations of profits or of salaries paid to teachers and tax evasion. It is important that corrupt and fraudulent practices are investigated, and operators and owners of schools who act illegally or abscond with student fees are prosecuted in the criminal system.[79]

XI. Oversight and monitoring mechanisms

101. The lack of effective oversight and regulating mechanisms is one of the most significant failures of States. In spite of regulations for registration and recognition, the rapid growth of unregistered low-fee private schools in the developing world shows that implementation gaps remain. The State has the responsibility to establish an oversight mechanism for private schools and must ensure its laws are being complied with.

102. The Special Rapporteur urges public authorities, parent-teacher associations, civil society groups and teachers' unions to closely monitor publicity and false claims that promote private providers in education. Public authorities should look into all cases of commercial advertising in education and take action in all cases of misleading claims as to quality education.

103. It is important that States carefully enforce laws, rules and regulations through monitoring and enforcement. Governments should strengthen national human rights mechanisms or ombudspersons to provide parents with a place to report suspected violations, and empower such bodies to investigate allegations.

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[76] See http://globalinitiative-escr.org/advocates-from-91-countries-call-on-governments-to-stop-education-profiteers/.

[77] See in particular www.right-to-education.org/news/un-special-rapporteur-urges-states-ban-all-commercial-advertising-and-marketing-schools#sthash.0ahWXwSW.dpuf.

[78] "Private schools for the poor", p. 54.

[79] Kenya highlighted that parents felt private schools could close down at any time because they existed merely on the "whim of an individual". See "The role and impact of private schools in developing countries", Day Ashley et al., "The role and impact of private schools", p. 27.

104. Parliamentarians have a crucial role to play in safeguarding the right to education by passing necessary legislation and, especially, by ensuring that for-profit education is outlawed, taking up questions related to enforcing laws, rules and regulations.

Monitoring privatization in education and United Nations human rights treaty bodies

105. The repercussions of privatization in education and the need for regulation is being increasingly recognized by the United Nations treaty bodies, notably the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights. Thus, in its concluding observations with respect to Morocco (CRC/C/MAR/CO/3-4), the Committee on the Rights of the Child expressed concern with the rapid expansion of private education, especially at the primary level, without the necessary supervision, leading to the reinforcement of inequalities in the enjoyment of the right to education. The Committee on Economic, Social and Cultural Rights has also sought information from Morocco about the development of private education and on the impact of privatization on education system (see E/C.12/MAR/Q/4).

106. The questioning of the privatization of education in Ghana by both the Committee on the Elimination of Discrimination against Women (see CEDAW/C/GHA/Q/6-7) and the Committee on the Rights of the Child (see CRC/C/GHA/Q/3-5) is a welcome development. In October 2014, the Committee on the Rights of the Child asked Ghana to provide detailed information on the reasons behind the increase in private education, which limits access to quality education for children who cannot afford private school tuitions (ibid.). The Committee on Economic, Social and Cultural Rights has asked the Government of Uganda to provide information on the impact of the growth of private education on the right to education of girls and children living in poverty (see E/C.12/UGA/Q/1).

107. The Special Rapporteur would like especially to urge the Human Rights Council that, in the context of the universal periodic review, noted that it is crucial to inquire about the negative impacts of privatization on the right to education in countries under review and measures taken by Governments to regulate private providers and safeguard education as a public good. State obligations for protecting right to education, particularly in the context of privatization, must be a central concern.

XII. Post-2015 development agenda

108. Education provided by private proprietors or enterprises is neither free nor equitable and the Special Rapporteur welcomes the proposal of the Open Working Group on Sustainable Development Goals to ensure, by 2030, that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, as well as to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all (see A/68/970 and Corr.1, goal 4 and target 4.1). The underlying obligation for States to realize the right to education, including through enhanced public investment in education as an essential prerequisite, must be emphasized.

109. In this respect, the Special Rapporteur refers with concern to the 2014 report on assessing progress in Africa towards the Millennium Development Goals,[80] which contains a recommendation to speed up private sector investment in education. This disrespects the proposal by the Open Working Group and undermines the right to education. The conclusions in the report that "Africa must build a vibrant private sector that supports the development of a dynamic primary education system ... establishing a liberal and attractive regulatory framework that is conducive to profitable returns on investment" overthrows States' responsibility for education as an essential public function. Ensuring free education of good quality for all is a core obligation of States, as established in, among others, the African Charter on Human and Peoples' Rights, which provides that every individual shall have the right to education. The Special Rapporteur therefore commends a joint statement by civil society organizations calling for the withdrawal of that report.[81]

110. Building an inclusive education system is a main thrust of the future development agenda and requires measures to curb privatization, which breeds exclusion and inequities and jeopardizes human development. Privatization impedes access to free basic education for the poor and marginalized; preventing this must be an overriding development concern, since education is a key instrument for ending poverty. The post-2015 development agenda should contain firm commitments by Governments to fostering social justice and equity and accordingly devise national implementation strategies for effectively regulating privatization in education.

XIII. Conclusions and recommendations

111. **Education is a fundamental human right and a core obligation of States. It is not a privilege of the rich and well-to-do, it is an inalienable right of every person. Principal responsibility for the direct provision of education lies with the State. However, education as a public function of States is being eroded by market-driven approaches and the rapid growth of private providers, with scant control by public authorities. Privatization negatively affects the right to education both as an entitlement and as empowerment. It breeds exclusion and marginalization, with crippling effects on the fundamental principle of equality of opportunity in education. It also entails disinvestment in public education.**

112. **Education benefits both the individual and the society and must be preserved as a public good; social interest in education must be protected against its commercialization. The corrosive impact of privatization on the right to education must receive foremost consideration in education laws and public policies. The commercialization of education should have no place in a country's education system.**

113. **Guided by principles of social justice and equity, as well as human rights law, regulating private providers is essential to mitigate the potentially deleterious and negative effects on students, education systems and societies. In this, Governments can be inspired by numerous decisions by courts and emerging jurisprudence.**

114. **Bearing in mind the issues highlighted in the present report, the Special Rapporteur would like to offer the recommendations below.**

[80] Available from www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/MDG_Report_2014_11_2014.pdf.

[81] Available from http://globalinitiative-escr.org/wp-content/uploads/2014/11/141127_Statement-privatisation-AfDB.pdf.

1. **Provision of education as the State's responsibility**

115. **The State remains primarily responsible for fulfilling the right to education on account of its international legal obligations. Governments should not allow low-fee private schools and should restore education as their essential public service function. The provision of basic education free of cost is not only a core obligation of the State, it is also a moral imperative. The State must discharge its responsibility as guarantor and regulator of education as a fundamental human right of every child.**

2. **Regulatory framework centred on education as a public good**

116. **States should put in place an elaborate framework of regulations that are prescriptive, prohibitory and punitive, in order to control private providers.**

117. **Prescriptive regulations clearly establish conditions under which private providers may be permitted to operate within a country, as well as minimum norms and standards with which schools must comply. In the absence of such regulations, unregistered schools may proliferate. Laws on education should spell out the duties and responsibilities of private providers vis-à-vis communities, students, teachers and societies at large.**

118. **Prohibitory regulations are necessary to outlaw and stop discriminatory practices, for-profit education and false commercial propaganda. Education is a public function and a social responsibility. No private provider should be allowed to establish for-profit education and aggrandize private interests to the detriment of public interest.**

119. **Punitive measures are necessary to ensure compliance with standards and the law. Sanctions must be applied when private providers perpetuate social injustices, while criminal proceedings are necessary for fraudulent and corruption practices.**

3. **Controlling abusive practices**

120. **Nationally designated authorities should undertake full-scale investigations of fraudulent practices, including tax evasion by private providers who reap profits in the name of education. States should ensure that the financial operations of all private providers are regularly scrutinized and that this information is publicly shared.**

121. **As noted in a recent study,[82] the UNESCO International Institute for Educational Planning should undertake a full-scale investigation of corruption in privatized education and of the fraudulent and corrupt practices of private providers.**

4. **Revitalizing and valorizing education as an essential public service**

122. **Learning from the devastating impact of structural adjustments on education as an essential public service, and in the face of the prevalent market ideology and surging privatization in education, States must expand educational opportunities, recognizing the paramount importance of public investment in education as their essential obligation. Under no circumstances should a State provide financial support to private providers of education or allow private companies to operate multiple schools.**

[82] Hallak and Poisson, "Corrupt schools, corrupt universities: what can be done?".

5. Engaging the community in expanding public educational opportunities

123. **When States alone cannot fully meet public demand for education, community schools should be encouraged, as they can play a meaningful complementary role. Public authorities should, therefore, engage with communities for the realization for the right to education. Similarly, the foundations of public utilities established for philanthropic motives should be encouraged to contribute to education as a public good.**

6. Preserving education as a public good and fostering the humanistic mission of education

124. **Public authorities should not allow the pursuit of material values to the detriment of a humanist mission of education or the propagation by private schools of a value system solely conducive to the market economy, with learning systems devoid of cultural diversity. States must ensure that the education imparted in private schools is in conformity with the objectives of education laid down in the Universal Declaration of Human Rights and in international human rights conventions.**

7. Reporting obligations of private providers

125. **Regulations should prescribe full financial and performance reporting requirements for all private schools. It should be obligatory for all private providers to report regularly to designated public authorities on their financial operations, in line with prescriptive regulations, covering matters such as school fees collected and salaries paid to teachers, and to declare, in a fully transparent manner, that they are not engaged in for-profit education.**

8. Strengthening human rights control mechanisms

126. **Governments should strengthen existing human rights mechanisms such as national human rights institutions and ombudspersons or create special mechanisms to regularly oversee operations of private providers. Such mechanisms should have *suo motto* investigatory power, with a mandate to look into alleged violations by private providers and any abusive practices. Recommendations made by such mechanisms should be implemented by Governments.**

9. Monitoring of privatization and human rights treaty bodies

127. **The Special Rapporteur would like to urge the United Nations human rights treaty bodies to give special consideration during their dialogues with States to the negative impacts of private providers and whether their operations are regulated and controlled in accordance with human rights law and internationally established frameworks of the right to education.**

10. Monitoring of privatization and universal periodic review

128. **The Special Rapporteur considers it important, in the context of the universal periodic review, to look at the negative effects of privatization on the right to education in countries under review and for Governments to regulate private providers and safeguard education as a public good. State obligations for respecting, protecting and fulfilling the right to education, particularly in the context of privatization, should be a priority concern in such reviews.**

11. Fostering the justiciability of the right to education and public interest litigation

129. As already stated by the Special Rapporteur, the right to education is justiciable and Governments can usefully draw upon jurisprudence in formulating laws, regulations and policies for regulating private providers (A/HRC/23/35). When State obligations are incorporated into national legal systems, defending the right to education vis-à-vis private providers becomes easier. Rules and regulations that govern private schools must be easily available, and avenues outside of costly court systems must be created to allow parents, communities and civil society to bring complaints to public authorities.

130. In order to defend the right to education vis-à-vis operations of private education providers, the State should facilitate and promote public interest litigation, by providing legal aid or by supporting civil society entities that provide such a role. The State should also support legal clinics in law schools that seek to research and enforce the right to education in courts as a cost-effective way of promoting public interest in education.

12. Engaging with parliamentarians

131. Parliamentarians, particularly members of education commissions or committees, play a key role in laying down regulatory frameworks for controlling private providers in education, as well as overseeing their implementation. Their advocacy for such a framework is very valuable. States should empower parliamentary committees to monitor private education providers, to ensure the right to education is fully respected, protected and fulfilled in the country.

13. Encouraging and supporting the role of intellectual community and civil society organizations

132. The Special Rapporteur calls upon civil society organizations and the intellectual community, as well as students, parents and community associations, to expose the negative effects of private providers in education. He encourages them to voice their concerns more strongly and widely as an essential function of the social compact for education in an endeavour to forge a global movement against the commercialization of education. Their advocacy work for fostering social justice and equity is valuable to counter market-based approaches in education. Research, events and expert consultations on the effects of privatization on the exercise and enjoyment of the right to education should be encouraged and supported.

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the right to education, Kishore Singh

Addendum

Mission to Bhutan*,**

Summary

The Special Rapporteur on the right to education undertook an official visit to Bhutan from 26 May to 3 June 2014. The present report sets out his findings and recommendations on the situation of the right to education in Bhutan. The Special Rapporteur welcomes the progress made by Bhutan in the field of education in recent years, including the increasing access of boys and girls to primary and secondary education, and measures taken to improve the quality of education.

As a result of those efforts, basic education, comprising one year of pre-primary education to six years of primary school and four years of secondary school, is free and compulsory. Forty per cent of meritorious students are offered government scholarships for two additional years of secondary schooling. Students completing basic education can take advantage of tertiary education and technical and vocational education and training. University-level education is available, based on merit, for graduates of grade 12.

Bhutan has achieved near universal primary education enrolment. While equality between boys and girls is ensured throughout primary education levels, girls are underrepresented in the final two years of secondary school and at all tertiary levels.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

** Late submission.

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Despite the significant recent progress made with modest means, some areas of concern remain. The right to education forms part of the constitution, but an education act has not yet been developed. Children without citizenship or residency rights may not always be enrolled in schools. Technical and vocational education and training is not adequately responsive to the needs of the nation and reforms to remedy that situation remain insufficient.

The report also takes special note of the efforts by the Government of Bhutan to develop an education system which considers factors beyond literacy and numeracy. Educating for "gross national happiness" is an outstanding feature of the Bhutanese conception of human development. That is commendable as a national goal. However, it requires additional work and support to ensure that it is adequately mainstreamed into the education system and made relevant to Bhutanese students and society at large.

Bhutan has sought to replace the concept of gross national product with gross national happiness and by bringing those values into the education system, Bhutan may be demonstrating a way to promote sustainable development without causing undue harm to the environment, or social and cultural traditions, and by reducing inequalities between rural and urban students.

Annex

[English only]

Report of the Special Rapporteur on the right to education, Kishore Singh, on his mission to Bhutan (26 May–3 June 2014)

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I. Introduction

1. The Special Rapporteur on the right to education, Kishore Singh, carried out an official visit to Bhutan from 26 May to 3 June 2014 at the invitation of the Government. He wishes to extend his gratitude to Prime Minister Tshering Tobgay for taking the time to meet with him and engage in a genuine dialogue on the right to education as a national development priority.

2. During his visit, the Special Rapporteur met with a number of high authorities, including the Minister of Education, Mingbo Dukpa; the Minister of Home and Cultural Affairs, Damcho Dorji; Minister of Labour and Human Resources, Ngeema Sangay Tshempo; and Minister of Finance, Namgay Dorji.

3. He also met with senior government officials, including the Director-General of the Policy Planning Division, Ministry of Foreign Affairs; the Secretary of Education; the Director of the Gross National Happiness Commission; members of the Royal Education Council and of the National Commission for Women and Children; the Vice-Chancellor of the Royal University of Bhutan and a number of parliamentarians.

4. The Special Rapporteur had the opportunity to visit a number of educational institutions, including pre-primary, primary and secondary schools, as well as technical post-secondary education institutions and the Royal University of Bhutan. He also met with representatives of civil society and United Nations agencies, in particular the United Nations Development Programme (UNDP).

5. The Special Rapporteur expresses his gratitude to the Government of Bhutan for its invitation and the full cooperation extended throughout his visit. He also extends his thanks to the Resident Coordinator of UNDP in Bhutan and her staff and all those who took time to meet with him and share their experiences in the field of education.

II. Education as a high priority for national development

6. The Special Rapporteur was encouraged to see that education is a high priority for national development. The eleventh five-year plan (2013–2018)[1] demonstrates Bhutan's commitment to education. The plan sets out the pledge by the Government of ensuring "prosperity for all" through the effective empowerment of its people (*wangtse chhirpel*). It provides a path for Bhutan to achieve self-reliance and an indispensable role for education. The policy framework entitled "Bhutan 2020: a vision for peace, prosperity and happiness" and the education sector strategy, "Realizing vision 2020",[2] articulate the goals and processes for achieving Bhutan's unique development objectives of gross national happiness.

III. International human rights obligations of Bhutan

7. At the international level, Bhutan is party to several international human rights treaties, including the Convention on the Rights of the Child and its Optional Protocols on

[1] Gross National Happiness Commission, *Eleventh Five-Year Plan 2013–2018*, vol. 1 (Thimphu, 2013). Available from www.gnhc.gov.bt/wp-content/uploads/2013/11/Eleventh-Five-Year-Plan.pdf.

[2] Available from www.gnhc.gov.bt/wp-content/uploads/2011/05/Bhutan2020_1.pdf and **Error! Hyperlink reference not valid.** %20Strategy%20Vision%202020.pdf, respectively.

the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, and the Convention on the Elimination of All Forms of Discrimination against Women. Bhutan has signed but not ratified the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities. Collectively, those instruments contain many provisions related to the right to education and place an obligation on the State to take all necessary steps to protect, promote and fulfil the right to education for all persons in its territory, without discrimination.

8. However, the Special Rapporteur is concerned that Bhutan has not ratified the International Covenant on Economic, Social and Cultural Rights, or the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education. Those treaties are important, as they provide comprehensively for the right to education.

IV. Constitutional and policy framework for education

9. The constitution of Bhutan was adopted on 18 July 2008 in connection with its transition to a democratic, constitutional monarchy and contains several provisions on the right to education in its various dimensions.[3]

10. Article 9.15 of the constitution states that: "The State shall endeavour to provide education for the purpose of improving and increasing knowledge, values and skills of the entire population with education being directed towards the full development of the human personality."

11. Article 9.16 stipulates that "The State shall provide free education to all children of school-going age up to tenth standard and ensure that technical and professional education is made generally available and that higher education is equally accessible to all on the basis of merit."

12. Those constitutional provisions are further supported by a number of important policies. The national education policy of 2011 ensures that all Bhutanese children, including those with special needs, have access to a quality basic education (up to grade 10 or equivalent) that is free (in terms of tuition fees and textbooks) and equitable. The policy also sets standards for access, quality, curricula, assessment, the management of school performance and teaching.[4]

13. The tertiary education policy of 2010 provides a framework for universities, colleges and autonomous institutions.[5]

14. The technical and vocational education and training policy of 2013 provides the framework for vocational education and training. The policy requires the development of a vocational qualifications framework, which will allow for the recognition of skills already

[3] "Constitution of the Kingdom of Bhutan". Available from www.bhutanaudit.gov.bt/About%20Us/Mandates/Constitution%20of%20Bhutan%202008.pdf.

[4] Ministry of Education, "National education policy", part I (March 2012). Available from www.gnhc.gov.bt/wp-content/uploads/2011/05/NEP-2012-21st-March.pdf.

[5] Tertiary Education Division, Department of Adult and Higher Education, Ministry of Education, "Tertiary education policy of the Kingdom of Bhutan, 2010". Available from www.planipolis.iiep.unesco.org/upload/Bhutan/Bhutan_Tertiary_education_policy_2010.pdf.

learned, as well as providing a mechanism whereby students can continue into post-secondary education programmes.[6]

15. The Special Rapporteur is appreciative of the fact that the constitution and the education policies provide a solid framework which ensures 10 years of free and compulsory primary and secondary education, as well as merit-based opportunities for further education, regardless of race, gender or social class.

16. The national language is Dzongkha, which is the medium of instruction during the first two years of primary education. Education beyond that period is provided in English. However, Dzongkha continues to be taught as a separate course, as nearly 75 per cent of Bhutanese speak one of 24 other languages and dialects.

17. The Special Rapporteur notes, however, that much work remains to be done to develop a framework based on laws, rather than practices, policies or interpretations, so that in keeping with the provisions of the constitution, the right to education is placed within a national legal framework.

V. Education system

A. Profile of the education system

18. Basic public education in Bhutan is available without restriction. It is open to all children, regardless of their race, gender, social or economic status, or background, who are legally residing in the country. It is also integrated and inclusive, taking students of all religions and backgrounds, and accommodates children with disabilities in eight schools, with plans to staff and equip seven more. Further, it is co-educational, with boys and girls studying together in schools. However, only children who are Bhutanese citizens, or who have applied for refugee or immigrant status, are enrolled. Others, including stateless children, remain outside the education system.

19. Education in Bhutan begins with one year of free pre-primary education at the age of six, followed by grades 1 to 6, as the primary education cycle. That is followed by a six-year secondary education cycle of grades 7 to 12, which includes four free and compulsory years and two final years available for free to the top 40 per cent of grade 10 students. The 10 years of free and compulsory primary and secondary education are referred to as "basic education". Twelve years of primary and secondary education can also be provided in private schools. Those who complete grade 12 are then eligible to apply for tertiary education, based on academic merit, in public and private colleges. All students who have completed grade 10 may apply for technical and vocational education and training programmes.

20. At the end of the primary cycle, students are required to sit for a national-level examination, which is set by the Bhutan Council for School Examinations and Assessment but administered and assessed by the schools. At present, about 85 per cent of the students who reach the end of the primary cycle continue to the next level of education, while others drop out or repeat classes.

21. Secondary cycle students take national examinations at the end of grades 10 and 12. As of 2013, nearly three quarters of students who completed grade 10 have continued for

[6] Ministry of Labour and Human Resources, "Technical and vocational education and training policy" (Thimphu, 2013). Available from www.gnhc.gov.bt/wp-content/uploads/2011/05/TVET_Policy_draft_FINAL.pdf.

the final two years, while about one third of those who completed grade 12 have continued on to a general academic degree programme. The remaining students either repeat their exams to improve their scores, enrol in one of the technical and vocational education and training institutes, or leave education to find employment.

22. Tertiary education is currently provided through the Royal University of Bhutan, which administers a number of colleges.[7] In addition, Bhutan sends about 200 students annually on scholarships to universities in other countries, mostly to study medicine, engineering and agricultural sciences.

23. It is reported that private tertiary education is emerging in Bhutan, with three private colleges being proposed to the Government for approval, which are aimed at students who are currently studying internationally. Two of them seek to teach management, while the third will be a nursing and technical college. The Special Rapporteur cautions that the emergence of private tertiary education may draw talent and financial resources away from the public system. The Government should identify strategies to strengthen the public system to attract students currently studying abroad, rather than promoting privatized tertiary level institutions.

24. Bhutan has a decentralized, private monastic education system, offering education through 388 monastic schools and 3 nunneries, where a total of over 7,000 students are currently enrolled.[8] The monastic education system was formalized in the seventeenth century at the time of the foundation of the Kingdom of Bhutan and was the primary form of education until the introduction of the modern education system in the early twentieth century. Monastic education is aimed at teaching spiritual values through the study of ancient texts. The curriculum consists largely of religious rituals, grammar, poetry, numeracy, graphic arts and painting, chanting rhymes, philosophy, logic and meditation. From the seventeenth to the nineteenth centuries, monks held most government and administrative positions. However with the introduction of modern education, that is no longer the case. Today, monks are primarily involved in religious and ceremonial functions. Graduates of the monastic education system are entitled to apply to tertiary education programmes and may sit the civil service examinations, along with graduates of grade 12 in the formal public and private systems.

B. Access to education

25. Enrolment rates in education in Bhutan have risen dramatically in the last decade. According to a report of the Ministry of Education, in 2013 enrolment for grades 1 to 10 was 94 per cent. Children not currently enrolled live primarily in very remote areas which lack schools, or with nomadic families.

26. The overall literacy rate, comprising children and adults, is 63 per cent (72 per cent for males and 55 per cent for females), although there is an urban/rural divide at 79 and 56 per cent respectively.[9] With equal access to educational opportunities, that divide is expected to narrow.

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[7] They include Sherubtse College, Gaedugg College of Business Studies, two National Institutes of Education at Paro and Samtse, the College of Science and Technology, the College of Natural Resources, the Institute of Language and Culture Studies, the Royal Institute of Health Science, the National Institute of Traditional Medicine and Jigme Namgyel Polytechnic, which together offer higher education to 8,000 students annually.

[8] See *Eleventh Five-Year Plan*, vol. 1.

[9] See Asian Development Bank and National Statistics Bureau of Bhutan, "Bhutan living standards survey 2012 report" (2013). Available from www.nsb.gov.bt/publication/files/pub1tm2120wp.pdf.

27. The Special Rapporteur suggests that, in order to make education accessible to everyone free of cost as a right, free tuition, textbooks and sports items be provided by the Government. Where required, such as in remote and poor areas, meals and boarding facilities are partly subsidized or provided by the Government, which also provides free stationery to rural schools. Parents and communities are requested to provide small contributions or fees for school activities. In addition, a nominal admission fee is charged for every child enrolling in a pre-primary school, which can be waived by local school administrations in cases of need.

28. The constitution provides that education shall be free to all until the tenth grade and government scholarships are provided to the top 40 per cent of students for government secondary schools. Private secondary schools are emerging to take in students who have not received merit-based government scholarships, but only those who are able to pay the fees they charge can take advantage of that.

29. Despite public education being available to almost all children, the Government is supporting the development of private schools. There are currently 32 private schools, of which 12 cater for pre-primary and primary education and 20 provide secondary education. Six of the secondary schools are located in Thimphu and Phuentsholing, the biggest urban centres in the country. Most teachers in private schools lack academic teaching qualifications, although the Government is facilitating in-service training workshops to improve standards.

30. The Special Rapporteur notes with concern that there is no policy or legislation in place to regulate private providers in education; to ensure, for example, that private schools follow the same curriculum as public schools, even if this has been the practice so far.

31. Access to education is based on legal residence in Bhutan. One or both parent(s) must be Bhutanese, or in the case of a non-Bhutanese child, proof must be provided that the parents were authorized to bring their child into Bhutan.

VI. National achievements

32. The Special Rapporteur would like to emphasize some important progress he observed in Bhutan in implementing the right to education throughout the country, which he believes may be of particular interest to other least developed countries seeking to rapidly improve their educational systems.

33. Bhutan has almost achieved the Millennium Development Goals related to education by achieving near universal primary education enrolment with gender parity. It has also taken special measures to combat adult illiteracy. With the support of UNESCO, the non-formal education programme was introduced in 1991 with the objective of eradicating illiteracy. The national literacy rate has also improved from 59 per cent in 2005 to 63 per cent in 2013.

34. Currently, there are around 9,600 learners taught in 774 non-formal education centres in the country. The programme has had a positive impact, especially on women in rural areas, who constitute more than two thirds of the beneficiaries, by teaching them to read and write. Equally, the continuing education programme offers adults, who have had to leave school before completing their secondary education, the opportunity to upgrade their qualifications. In September 2009, during the award of the UNESCO Confucius Prize, the two programmes received an honourable mention for their emphasis on literacy and their focus on adults and out-of-school youth, particularly women and girls.

35. Bhutan has also placed emphasis on supporting the needs of children with disabilities. The Drukgyel Deaf Education School and the Khaling School for the Blind

provide specialized support, while the Ministry of Education oversees special education needs schools and programmes that provide inclusive education.

36. Bhutan's performance in education was widely recognized at the nineteenth session of the universal periodic review in 2014.

37. Bhutan adopted an extensive national human resource development policy in 2010. The Government has set professional, technical and vocational education as the highest priority within the education sector. There are currently 2,400 students, almost equally split between public and private institutions. The Ministry provides instructor training programmes for the staff of training institutes. Besides apprenticeships with partner companies, a village skills development programme, which teaches villagers basic agricultural skills, has been implemented in more than 1,200 villages.[10]

Educating for gross national happiness

38. The concept of gross national happiness is a uniquely Bhutanese contribution. As a paradigm shift from looking at development from a merely economic angle, it ushered in an alternative model to market-centred approaches to development. Coined in 1972 by the fourth King, Jigme Singye Wangchuck, who sought to modernize his country, the concept of gross national happiness has its foundation in the philosophic and cultural traditions of Bhutan and of Buddhism and aims to promote a holistic development concept that seeks to nurture both physical and mental well-being.[11] It recognizes that economic development serves primarily to improve physical well-being, without addressing the emotional, social and mental needs of people. Gross national happiness promotes the values of individual and social well-being that stress the pursuit of happiness. It is best understood as seeking to improve the overall well-being of citizens, rather than focussing only on economic development.

39. In order to address those broad objectives, Bhutan has created a policy which defines gross national happiness according to four pillars: (a) sustainable and equitable socioeconomic development, (b) the preservation and promotion of culture, (c) conservation and the sustainable utilization and management of the environment and (d) the strengthening of good governance. Using those pillars, it seeks to broaden the definition of development beyond a purely economic angle and to encourage citizens to consider development in a holistic manner.

40. The purpose of the pillars is to guide the Government in its policymaking by encouraging decisions which are propelled by sustainable development, aligned to fostering national human and spiritual well-being. For example, despite having significant natural resources, Bhutan has declined to permit extensive mining and forestry operations, as the environmental impact of such projects must be weighed against the economic benefits they may bring.

41. The Government of Bhutan has developed an elaborate framework of gross national happiness. The four pillars are elaborated into nine domains: psychological well-being,

[10] Asian Development Bank and Australia Aid, *Innovative Strategies in Technical and Vocational Education and Training for Accelerated Human Resource Development in South Asia* (Manila, 2014). Available from adb.org/sites/default/files/pub/2014/innovative-strategies-technical-vocational-education-training.pdf.

[11] See, for example, "What is GNH?", keynote speech by Jigmi Y. Thinley, Minister of Home and Cultural Affairs, on 21 June 2005 at the second international conference on gross national happiness. Available from www.bhutanstudies.org.bt/publicationFiles/OccasionalPublications/ThePhilosophyofGNHLyonpoJigmiThinley.pdf.

health, time use, education, cultural diversity and resilience, good governance, community vitality, ecological diversity and resilience, and living standards.[12] In accordance with those nine domains, Bhutan has developed 38 sub-indexes, 72 indicators and 151 variables that are used to define, analyse and evaluate gross national happiness.

42. At a time when market-centred approaches to development are being questioned, that paradigm shift in looking at development with a focus on social well-being and the pursuit of happiness should be applauded.[13] It is especially significant in furnishing an alternative model in order to align growth to socioeconomic, as well as cultural and spiritual, well-being.

43. The happiness-based approach to development has important implications for the education system of Bhutan. It must be seen in the light of article 9.15 of the constitution, which requires the country to "endeavour to provide education for the purpose of improving and increasing knowledge, values and skills of the entire population with education being directed towards the full development of the human personality." Those provisions echo article 26 (2) of the Universal Declaration of Human Rights, which also calls for education to "be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."

44. The concept of gross national happiness has evoked considerable interest from the international community and its importance as a holistic approach to development has been recognized by the United Nations. In General Assembly resolution 65/309 Member States were invited to "pursue the elaboration of additional measures that better capture the importance of the pursuit of happiness and well-being in development with a view to guiding their public policies." The concept also has significant implications for preserving education as a public good and for its humanist mission, in contrast to the instrumental approach to education, which confines it to the promotion of reading, writing and arithmetic. The Special Rapporteur applauds the efforts of Bhutan to develop a holistic approach through its policy work on educating for gross national happiness.

45. The Special Rapporteur, therefore, takes a particular interest in considering how Bhutan has attempted to develop an education system in accordance with the precepts of gross national happiness. Its implementation has required that the concept be embedded into the education system. Initial steps have included the development of a meditation and mind-training module for each grade, adding elements of gross national happiness into the school curriculum by, for example, increasing awareness of the environment in daily lessons and teaching classes on critical thinking and media literacy. Innovative school administrators have developed student-led school gardens to bring children from urban backgrounds into contact with nature.

46. The inclusion of the concept of gross national happiness is also intended to provide context and background to subjects being taught in educational establishments, with the hope that education will thereby become more relevant and engaging to students and teachers. Such an objective has underpinned education policy. Former Prime Minister Jigme Thinley told participants of a workshop on educating for gross national happiness that "Infusing GNH understanding creates a purpose and goal for teaching and learning to both teachers and students that makes study less burdensome and more enjoyable."[14]

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[12] For a more detailed description, see www.grossnationalhappiness.com/nine-domains/.

[13] See United Nations Research Institute for Social Development, "Social inclusion and the post-2015 sustainable development agenda" (April 2014), p. 5.

[14] "Proceedings: educating for gross national happiness workshop, 7–12 December 2009" p. 144. Available from www.gpiatlantic.org/pdf/educatingforgnh/educating_for_gnh_proceedings.pdf.

47. The rise of material well-being does not exclude a concomitant rise in environmental and cultural awareness; a capacity for giving primacy to social well-being; and a values-based engagement with society and politics. The Special Rapporteur notes that this ambition matches the aspirations found in the Universal Declaration of Human Rights and numerous international human rights treaties. Gross national happiness is akin to a human rights-based approach, which imparts strength and legitimacy to development planning. Human rights standards provide a normative framework that grounds development within a universal set of values, so that development is pursued in an equitable, just and sustainable manner.

48. Despite significant efforts by the Ministry of Education and others to promote the concept of gross national happiness, it was also reported during the visit that it needed to be better understood in order to evoke greater interest in the average Bhutanese citizen in fostering the concept as an overriding national cause. The aspiration of "educating for gross national happiness" is that it will inculcate values in all Bhutanese citizens which place economic interests within a greater social, environmental and cultural context. It remains a challenge for the Government to find ways to better implement those goals through the education system.

VII. Key challenges

49. Although Bhutan has placed education at the heart of its national development plans and has a number of achievements in the field of education to its credit, like many countries it is faced with challenges in making the right to education a full reality. A number of concerns were brought to the attention of the Special Rapporteur during his visit.

A. Universalizing access to education as a right

50. The right to education is enshrined in article 9.16 of the Bhutanese constitution, which provides for 10 years of education for all. Despite that, the most recent education policy continues to tie registration to citizenship or legal immigration status.[15] That distinction should be eliminated as soon as possible, and the changes widely advertised, to address children and adults without residency documents, including stateless children, who are present in Bhutan. While Bhutan deserves credit for its recent efforts to provide education to all registered children, especially those in rural areas, it must take measures to address the remaining barriers.

51. Bhutan faces the challenge of a small, sparsely populated country that is subject to immense immigration pressure from neighbouring States, including illegal immigration. That concern, however, cannot be addressed by denying the children of parents who lack documentation proving their right to reside in Bhutan their right to an education. All children who are in Bhutan for any period of time must have the right to access education.

52. The Special Rapporteur is concerned that local administrative practices may be preventing children of aliens within Bhutan from receiving an education. The right to education accrues to all children, regardless of their legal status, as described in the constitution. That is particularly relevant, owing to the unresolved status of many people of Nepalese or Indian ancestry who have lived in Bhutan for decades or generations without residency or citizenship rights. The Ministry of Education should continue to ensure local *dzongkhags* (administrative areas) and school administrators process all children without

[15] See Policy and Planning Division, Ministry of Education, "30th education policy guidelines and instructions", annex 5.

regard to their residency rights and that revised policies which clearly outline that are promulgated.

53. The Committee on the Rights of the Child expressed concern about alleged discrimination in education against children of Nepalese ethnic origin, including an inadequate number of educational institutions being built in areas populated by them. They do not receive education in their own language and the Committee also expressed concern about the lack of data on children of Nepalese ethnic origin attending school. The Government has responded by building more schools, reaching almost full enrolment, but instruction remains only in Dzongkha and English. Education statistics should be disaggregated to ensure that minority groups can be identified to eliminate any unintended negative outcomes.

54. The Special Rapporteur appreciates the efforts made by Bhutan to universalize access to education and the remarkable improvements achieved in a short space of time. Although only 1.3 per cent of primary school-aged students are not in schools, those who remain excluded are primarily children living in remote areas or with nomadic families, some of the urban poor and children with learning disabilities, who lack access to adequate facilities. The Special Rapporteur encourages the Government to take the required measures to reach all students, including at the secondary level.

55. A strategy currently being discussed to rationalize schools in remote areas is the construction of regional boarding schools. That would address the relatively high cost of rural schools and the difficulty in deploying qualified teachers. It will be important, however, to ensure that the cultural and emotional needs of children as young as six being taken away from their homes are adequately met and regularly overseen to ensure their welfare is fully respected. Further, the situation of children from disadvantaged backgrounds should not be impaired.

B. Improving the quality of the education system

56. The Bhutan Royal Education Council has reported that the current education system does not prepare students adequately for employment or post-secondary education.[16] Weaknesses were found in student performance; teacher qualifications, skills and ongoing training; classroom assessments; and teacher preparation, curriculum standards, resources and incentives for quality.[17] In its report, the Council was particularly concerned with the lack of qualified and motivated teachers, inadequate curricular resources and poor instructional leadership and in-service training. The Special Rapporteur notes that despite continuing improvements, Bhutan faces challenges in post-secondary programmes and the inadequacy of tertiary-level educational facilities. Less than 1 per cent of the total enrolment is in higher education.[18] In addition, grade 12 graduates struggle to succeed in foreign universities.

C. Strengthening the teaching profession

57. Having built sufficient schools to reach more than 96 per cent of all children, Bhutan now struggles to find a sufficient number of qualified teachers to staff them. Furthermore,

[16] Centre for Educational Research and Development, Paro College of Education, Royal University of Bhutan, *Quality of Education in Bhutan*, (Paro, 2008). Available from www.pce.edu.bt/sites/default/files/Quality%20of%20Education%2011.pdf.

[17] See, *Eleventh Five-Year Plan*, vol. 1, pp. 140–142.

[18] Education Sector Strategy, p. 7.

teachers, particularly in rural areas, are not well qualified or trained. Primary school teachers rarely have post-secondary or teaching degrees and not all current teachers have the inclination or aptitude to obtain higher certification. The Government is making a considerable investment in the teacher training college in Paro and provides continuing training opportunities, but the shortage of qualified teachers is likely to persist, as teaching is not perceived as a desirable career by most high-school graduates. The reliance on hiring foreign-qualified teachers, often from India or other nearby countries, must be seen as at best a temporary solution.

58. It was repeatedly indicated to the Special Rapporteur that teaching is the least preferred profession for high-school or university graduates. Reasons included a perceived lack of incentives, including low to average pay, a poor career path and a lack of social esteem for the profession.

59. The significant growth in the past 10 years of schools in remote and small communities has created considerable recruitment challenges, as few university-educated teachers are inclined to live in such conditions. At present, some schools in remote regions have fewer than 20 students in all grades, with only two teachers to staff them. Housing and poor quality of life discourage teachers from applying for remote job postings, as does the lack of transportation infrastructure, which can mean hours of arduous travel to the nearest large community. The financial incentives are insufficient to attract enough teachers to volunteer to accept remote placements. However, the planned construction of boarding schools for children from rural areas would entail prolonged separation from parents and its repercussions on the best interests of the child need to be borne in mind.

60. Current efforts at mainstreaming gross national happiness into teaching methods are a valuable contribution in this regard; incorporating the four pillars of gross national happiness into all curricula deserves further efforts. At the same time, it is important for the Ministry of Education to better explain the concept of gross national happiness and its key importance to both teachers and students through the media and public information training.

61. Achieving higher academic scores for students and improving employment outcomes for secondary school graduates are the overwhelming concerns of educators and parents, and the value and applicability of gross national happiness in teaching are inadequately understood. While such concerns are legitimate, efforts to promote educating for gross national happiness must be intensified.

62. It is opportune for Bhutan to explore the possibility of taking measures within the framework of the South Asian Association for Regional Cooperation (SAARC) for promoting education through collaborative endeavours, based on the experience of the SAARC development goals. That is an area which has enormous potential for Bhutan to take the initiative in exchanging experiences and learning from available examples, with a view to strengthening the right to education in the countries of the region.

D. Education of girls

63. Access to education for girls remains a challenge in rural settings, where girls are often kept at home to assist in domestic chores and where social expectations that women should be concerned with starting a family are strong. Affirmative action programmes are necessary, pursuant to the recommendation made by the Committee on the Elimination of Discrimination against Women in 2009 that Bhutan take temporary special measures to accelerate de facto equality between women and men, particularly through special education measures for promoting gender equality (see CEDAW/C/BTN/CO/7, paras. 15 and 16). The gender gap in secondary and higher education, where girls are increasingly falling behind, is a particular concern. According to 2013 national enrolment statistics, the number of girls

attending school exceeds that of boys in primary education, but that is not the case at the secondary level, owing to higher levels of females dropping out. Those statistics also show that the number of girls entering technical and vocational education and training is lower than that of boys and fewer girls are progressing to tertiary education. Many girls stop their education after 10 years and seek to start a family.

64. In post-secondary programmes, including technical post-secondary institutions, overall boys outnumber girls, with boys representing two thirds of university students. As university education is merit-based, that disparity is a result of complex social factors, including parental support and expectations. Non-traditional portrayals of women, particularly in the media, were suggested by educators as an important means to foster the interest of girls and women in post-secondary education. Low female interest in technical and vocational education and training may be related to employment perspectives, as some employers, such as construction or logistics companies, are unwilling to accommodate female staff.

E. Eliminating child labour

65. The Special Rapporteur was informed during his visit that in rural areas child labour, particularly related to subsistence agriculture, continued to be a concern. In its concluding observations, the Committee on the Elimination of Discrimination against Women expressed concerned at the persistence of child labour, in particular the situation of girl child domestic workers, who do not have access to education. The Committee urged Bhutan to strengthen its efforts to eradicate domestic child labour, and ensure that children, in particular girls, have access to education. The Committee also recommended that Bhutan engage in a public outreach campaign to inform the population about the need to ensure that the rights of all children including access to education are respected (see CEDAW/C/BTN/CO/7, paras. 31 and 32). The Special Rapporteur was encouraged to find that the Ministry of Education was aware of those concerns and continued to address them. However, he believes that more needs to be done to fully eradicate child labour.

F. Children with disabilities

66. The Special Rapporteur shares the concerns expressed by the Committee on the Rights of the Child in its most recent concluding observations on Bhutan (CRC/C/BTN/CO/2). The Committee noted the measures Bhutan had undertaken to enhance access to specialized services and education for children with disabilities. However, the Committee regretted that there were no accurate figures on the number of children with disabilities in Bhutan and that the resources dedicated to guaranteeing the implementation of the rights of children with disabilities were inadequate. The Rapporteur appreciates that Bhutan has since conducted the two-stage child disability survey in 2010–2011 and continues to work with partners to strengthen access for children with special needs.

67. The Committee on the Rights of the Child recommended that Bhutan develop more schools which cater to children with special needs, develop an inclusive education strategy and elaborate a plan of action in order to increase the school attendance of children with special needs, while focusing on day-care services for such children in order to prevent their institutionalization.

68. The Special Rapporteur would like to refer to the national report of Bhutan to the universal periodic review in 2014, which notes that there will soon be 15 schools capable of including children with special needs (see A/HRC/WG.6/19/BTN/1, para. 50). The

Rapporteur encourages Bhutan to strengthen the provisions related to special needs in its education policy framework.

G. Regulating private education

69. The emergence of a private education sector in Bhutan is a matter of concern to the Special Rapporteur. There will need to be a sound regulatory framework, in order to ensure conformity with human rights law, as well as constitutional law and national education policies. That is critically important in order to to prevent for-profit education providers from undermining the right to education.

70. The guidelines for private schools in Bhutan provide for a memorandum of understanding between the Department of School Education and the proprietor of a school, pursuant to the government policy regarding the establishment of private schools, which requires them to fix and declare the yearly lump-sum school fees for a student for one academic year. Such guidelines should be strengthened and take the form of regulations, so that private providers are not allowed to charge exorbitant fees and reap profits.

71. Regulations are also important in other respects, such as when private providers seek to exploit parents by providing substandard education or deploying underqualified teachers, which compromises minimum standards of education. Moreover, expensive, elite private schools will draw the best-performing teachers from public schools. Catering to the children of the emerging middle class, privatization also engenders disparities in access to education, resulting in marginalization and social inequality. Regulations and their enforcement for private sector institutions will therefore become increasingly important. It was reported to the Special Rapporteur that private schools actually follow the public school curriculum, but that there was no particular policy or regulation in that regard. The Ministry of Education, which is responsible for quality control, has very limited capacity to carry it out effectively. The Special Rapporteur urges the Government to pass regulations which mandate private schools to meet national standards, including those regarding access for persons with disabilities, and to develop administrative procedures, such as a school oversight board or committee, which allow parents easily to file complaints about violations by schools with the Ministry of Education. That will supplement any official oversight mechanisms, which are often inadequately staffed.

H. Technical and vocational education and training and skills development

72. In 2010, Bhutan adopted an extensive national human resource development policy. The Government has set professional, technical and vocational education as the highest priority within the education sector. Areas of priority concern include public-private partnerships and industry collaboration; on-the-job training; flexible career pathways; the introduction of short-term courses in vocational institutes; the promotion of entrepreneurship by training institutions; targeting the needs of women students; further development of the Bhutan vocational qualifications framework; and recognition of prior learning. The main strategy for implementation is to strengthen coordination between and among stakeholders in human resources development.

73. The Special Rapporteur witnessed the success of students pursuing the traditional arts and crafts being taught by the Institute of Zorig Chosum. Graduates have found a ready market for their skills, and have become successful, self-employed artists, which is an important means of supporting the national cultural heritage. He considers that those programmes, fostered with the contribution of the Tarayana Foundation, should be carefully expanded, as they provide an excellent way of promoting both cultural development and

avenues for employment generation. Technicians, craftsmen, managers and operators are critical to the success of industry. As Bhutan modernizes, the need for such skills will only grow.

74. Private providers of vocational training in Bhutan are subject to registration and accreditation. Accreditation of specific courses is voluntary and confers on the recipient official recognition. However, challenges remain for understaffed departments and their, at times, undertrained officials.

75. Vocational training is seen by primary and secondary school students, teachers and administrators as a career path for low-performing students and school dropouts. Making technical and vocational training and education better esteemed within Bhutan must begin in the school system. At present, the final two years of secondary school are focused on streaming students into university or white-collar careers, with only those who do not succeed considering options for vocational training. The Special Rapporteur considers it critically important to take steps towards transforming the perception of technical and vocational education and training as a career path of last resort; technical and vocational education and training should be made more attractive and better esteemed socially and professionally. It should be geared to produce the skilled workers that Bhutan requires.

76. Collaboration with the private sector was reported to be weak in all areas apart from tourism and many companies prefer to hire employees from abroad, justifying their choice by the lack of skilled local workers. In part, that is because technical programmes are not aligned with the needs of the private sector, while employers find it more expedient to hire workers internationally, rather than engage with improving the education system.

77. During the visit, the Rapporteur noted the weak infrastructure of technical and vocational education and training institutions and their lack of financial resources, which are constraints on the system. In that context, the Special Rapporteur wishes to recall the UNESCO Revised Recommendation concerning technical and vocational education (2001), which states that: "Government and the private sector should recognize that technical and vocational education is an investment, not a cost, with significant returns". A high level of technical education is important for graduates to be attractive to potential employers.

78. Unlike other types of education, technical and vocational education and training require institutionalized cooperation with industry, with a focus on skills development, which responds to industry requirements. Education Ministry officials should actively seek engagement with industry, in order to ensure that students have assured opportunities of receiving vocational training in enterprises and are able to acquire technical competencies attuned to the requirements of their future employers.

79. Recognizing the weaknesses of technical and vocational education and training, the Government has recently undertaken significant reforms to the system. The Special Rapporteur hopes that those reforms will lead to a transformation of technical and vocational education and training under the aegis of the National Technical Training Authority, which is responsible for regulation under the Ministry of Labour and Human Resources.

I. Monastic education

80. Bhutan has an ancient tradition of accepting young men, and now young women, into monasteries to pursue an alternative form of education. The monastic education system is self-regulated and, while it is still held in high esteem, care must be taken to ensure that the system modernizes in tandem with other reforms in Bhutan. The monastic system does provide valuable cultural and historical teachings, which may complement the curricula in the public education system. Experiments were conducted at Sang Chokhor Shedra and

other places in an effort to find convergence between traditional and modern pedagogy and curricula, and this should be strengthened and continued, with the full understanding that public education, in contrast to the monastic system, must be secular in nature. The monastic education system should also allow for students to join the public system at any time and vice versa, to ensure that those complementary traditions work together to strengthen the social fabric of the nation and do not result in the creation of further inequalities. It was reported that many students in the monastic system are from very poor backgrounds, whose parents have brought them there, as they are unable to support their children. It is difficult for such children to exit the system and attend the formal school system.

J. Preserving and valorizing national languages

81. The decision to provide education in English is an important means for a small, landlocked country to ensure its graduates are able to avail themselves of international opportunities. The success of its students in international programmes and in the ongoing development of the economy is perhaps a testimony to this.

82. However, the preservation of Dzongkha as a national language is an issue which deserves consideration. The Special Rapporteur was concerned to receive reports during his visit that some students were unable to write well in Dzongkha and that other Bhutanese languages were not even offered as a second language in any curriculum. In some cases, particularly with grade 10 school leavers, students were reportedly not fully proficient in either Dzongkha or English.

83. The Special Rapporteur considers this a cause of great concern, as it would be a national setback if English became the national language and Dzongkha and other languages were gradually forgotten. That would also be contrary to the second pillar of gross national happiness, which seeks to celebrate the diversity of Bhutanese cultures and languages. It should be addressed seriously and quickly, particularly at the primary school level where language skills are most easily learned. The Government should consider whether a bilingual education, with English, mathematics and science taught in English and all other subjects taught in Dzongkha, might prove an effective long-term strategy for preserving Dzongkha.

VIII. Conclusions and recommendations

84. **Bhutan should be commended for its commitment to strengthening its education system and for placing it at the heart of its national development plans. Attaining the education-related Millennium Development Goals and achievements in literacy for a least developed country such as Bhutan is praiseworthy. That commitment is already paying dividends, as it has contributed to the rapid development of the country. Bhutan is also showing a path to development that seeks to escape the social and environmental damage seen in many other countries. The pledge by the Government of ensuring "prosperity for all" through the effective empowerment of its people (*wangtse chhirpel*) must be applauded.**

85. **The rich traditions of Bhutan have led to the development of the concept of gross national happiness. Educating for gross national happiness is a commendable national endeavour to instil into children the social and moral values that help to address the challenges which may arise with rapid economic development. The importance of a model of development founded upon concepts of happiness and well-being, which echoes the philosophic traditions of Bhutan, and which seeks to put the**

human being at the centre of development, must be recognized in terms of human rights values and a human rights-based approach to development. While it remains a work in progress, the Special Rapporteur is of the opinion that this concept is an invaluable contribution to the global understanding of the need for an alternative approach to measuring growth and development merely in terms of gross national product.

86. Educating for gross national happiness seeks to put the concept of gross national happiness into practice. In addition to integrating it in the school curriculum, Bhutan seeks to incorporate its values into teaching methods, school facilities and student behaviour patterns. The Special Rapporteur strongly encourages all nations to look at the Bhutanese example of how that concept has been operationalized and to adopt measures which expand education to include measures beyond those furthering economic development alone.

87. Taking into consideration his findings during the visit, the Special Rapporteur wishes to make the following recommendations with a view to contributing to the full enjoyment of the right to education in Bhutan.

A. Ratification of international treaties related to the right to education

88. Bhutan should take steps to sign and ratify the International Covenant on Economic, Social and Cultural Rights and the UNESCO Convention on the Elimination of Discrimination in Education, which provide comprehensively for the right to education. Bhutan can enhance its international standing and further recognize its constitutional and policy achievements by adopting those instruments.

B. Strengthening the domestic legal framework

89. The State should adopt comprehensive legislation in keeping with the provisions on the right to education in the constitution and with its international obligations. Accordingly, the Government should develop a legal framework for the right to education covering key areas, such as the right to quality education, the status of teachers, domestic financing of education and the regulation of private providers of education. That can be achieved either by a new comprehensive law, or by specific legislation in those areas of critical importance.

90. Such a legal framework should be applicable to both State-run and private schools. Bhutan should take additional measures to strengthen its education system and adopt a legal framework, which sets a minimum floor for spending on education. That would ensure that education remains a high priority even as governments change.

C. Universalizing access to education without discrimination or exclusion

91. Bhutan must take further measures aimed at ensuring the enjoyment of the right to education by every child throughout the country, without discrimination or exclusion. The Special Rapporteur encourages the Government to take the necessary steps to ensure that all children, even in remote areas, are able to enrol in schools, continue their education and not to be sidelined by a lack of the support they need. He also encourages the Government to consider further ways whereby students with disabilities are given the opportunity to integrate into the regular system. Similarly, issues around the exclusion of some children lacking appropriate documentation must

be addressed. The continuing existence of school or university admission policies or practices which may discriminate against some students must be identified and abolished.

D. Special consideration for education for the empowerment of girls

92. The Special Rapporteur would like to encourage the Government to give special consideration to education aimed at the empowerment of girls and to take additional measures to improve the educational achievements of girls in the later years of education. Targeted measures are needed to ensure that girls have the confidence and support to reach their full potential in education and any barriers to that should be addressed. Efforts aimed at achieving gender parity in tertiary education should continue, as there are still only three women for every five men in tertiary institutions. Increased female representation in the civil service and the national parliament will provide additional role models for schoolgirls and encourage them to transform their lives.

E. Improving the quality of education

93. Despite tremendous progress made in Bhutan, particularly in the area of improving access to education for all, there is a need to focus on quality, which has been recognized by the Government.

94. In order to improve quality, curriculum reform should be continued in an effort to improve educational attainments in academic disciplines and bring the values of gross national happiness and national traditions to children. Recognizing that qualified teachers are indispensable for enhancing the quality of education, teacher training should be increased, particularly for teachers at the primary level, who remain underqualified. Improving the working conditions of teachers and enhancing their social standing, as well as their professional status, should be a key concern in education reforms.

95. Any decision to close rural schools and construct regional boarding schools should be taken in consultation with parents and communities, bearing in mind the best interests of the children concerned. The public authorities must ensure that the education provided in schools in the largely rural and marginalized communities meets national standards and does not foster inequalities.

96. The Government should step up its efforts to promote education for democratic citizenship, as part of its programme of education and training on human rights and universal values. The dimension of human rights education of the International Decade for the Rapprochement of Cultures, which was launched in 2013, is an important emerging concern in the field of education.

F. Reinforcing educating for gross national happiness

97. The Special Rapporteur would like to commend the Government of Bhutan for embracing the concept of education for gross national happiness and its efforts to give shape to it. The efforts to counterbalance increasing materialism and commercialization in society by attaching a high degree of importance to the humanistic mission of education are commendable, as rapid economic development and urbanization risk creating a generation which focuses solely on material well-being.

98. Educating for gross national happiness, curriculum reform and practical measures to ensure teachers are demonstrating gross national happiness in their daily actions, will all assist in operationalizing the overarching concept for creating universal values. The Government should continue to support efforts by universities and the intellectual community to conduct research to better understand the concept of gross national happiness and to find the most effective means of operationalizing it. Efforts made by the Royal University of Bhutan, the Centre for Bhutan Studies, GNH Research, and others in that field deserve support.

99. The Special Rapporteur supports the preparation of the national blueprint for education, built upon past experiences, as a road map that will impart further strength to a people-centred, holistic path to development, making Bhutan exemplary as a small country in terms of educating for gross national happiness.

G. Preserving and valorizing national languages

100. The Government should take steps to preserve and valorize Dzongkha as the national language. That would respond to the second pillar of gross national happiness, which seeks to celebrate the diversity of the cultures and languages of Bhutan. Dzongkha should be a medium of instruction, particularly at the primary school level where language skills are most easily learned. The Government should consider whether bilingual education, with English, mathematics and science taught in English and all other subjects in Dzongkha, might prove an effective long-term strategy for preserving Dzongkha.

H. Regulating private education

101. The Government must develop a policy and legislative framework to regulate private education institutions to ensure that education is safeguarded as a public good and is not reduced to a for-profit business. The negative impact of private providers in education on the right to education as an inalienable right of every child, without regard to economic status, social situation or property, should be a matter of critical concern to the public authorities.

102. In Bhutan, as in other countries, privatization in education is a growing trend. The Government should ensure that private schools follow the public curriculum and that only qualified teachers are employed in them. It should also ensure that fees charged by private providers are well regulated. The Special Rapporteur would like to encourage the Government to build on the existing guidelines for private schools in Bhutan by legislating for a regulatory framework that will ensure that the social interest in education is not sacrificed for the sake of private profit and education is preserved as a common good.

103. Further, special care must be taken to ensure that private schools do not replace the public system for higher performing or wealthy students and thereby exacerbate the inequality within the country. That is best addressed by ensuring that public education remains the first choice of all parents owing to its high quality.

I. Strengthening technical and vocational education and training

104. The Government should ensure that a viable, attractive technical and vocational education and training programme, integrated into secondary education, receives full support so that all students receive a high-quality education geared to

skills development. It should review its post-secondary educational investment priorities, with more funding for such programmes and institutions. They are of strategic importance in terms of skills development and can provide great leverage in addressing the present 12 per cent poverty rate by empowering students from poor families through technical and vocational education and training.

105. Developing innovative approaches in national human resource policies and the education system, including competency-based qualifications programmes for technical and vocational education and training aimed at creating a competent and skilled national workforce, are necessary if Bhutan is to reduce its dependence on foreign workers. Programmes in technical and vocational education and training for developing the skills needed in natural resource extraction, hydropower and ecotourism can prepare graduates for deployment in the workforce in those areas. The necessary steps should be taken to develop an institutionalized framework of collaboration with the private sector for promoting technical and vocational education and training and developing the necessary skills. Such collaboration could include, for example, sponsorship of specific programmes needed by particular industries; and work placement programmes for students in technical and vocational education and training based upon the dual system (training in schools as well as in enterprises). In-school vocational training fairs, on-site school visits and similar initiatives may help students to appreciate better the career possibilities associated with non-academic career options. Teachers must also be trained to enable them to guide students better towards non-academic career options, for example through aptitude tests.

J. National investment in education on an enduring basis

106. Bhutan should adopt a legal framework which ensures a minimum floor for spending on education, such as 4 to 6 per cent of GDP, or 15–20 per cent of the national budget on an enduring basis. That is necessary to sustain education as one of the highest priorities, even as governments change over time. Bhutan should begin planning for the possibility of receiving less international financial assistance as it advances towards becoming a middle-income country. To maintain its growth, it will need to find domestic, sustainable ways to support its education system. A legal framework is essential to ensure sustainability and continuity in investment in education.

K. Compatibility of monastic education with the formal education system

107. There is space for the formal education sector to import some of the universal human values and philosophic traditions being taught in the monastic system. At the same time, the Government should engage in discussions with the monastic authorities to ensure that graduates of that system receive the same basic education in fields such as languages, arts, science and mathematics. The State must ensure that children from economically disadvantaged families are not further disadvantaged in their employment or academic opportunities through a monastic education.

L. Fostering global interest in educating for gross national happiness in the context of the post-2015 development agenda

108. As stated in the report entitled "Happiness: towards a new development paradigm", the "time has never been more opportune to re-orient the goal of development towards genuine human happiness and the well-being of all life. There is

a growing global consensus on the need and urgency for such a holistic new model."[19] There is much for the world to learn from that concept and the Special Rapporteur would like to urge the Government of Bhutan to make every effort to share and disseminate those ideas throughout the world, recognizing that educating for gross national happiness is an important way to achieve the education objectives set out in the Universal Declaration of Human Rights. In resolution 65/309, the General Assembly recognized happiness as a holistic approach to development and welcomed further international discussions on the theme. That demonstrates the global interest in the concept of gross national happiness and the Special Rapporteur considers that it is opportune for the Government to continue its pioneering efforts to bring the concept forward in discussions on education-related goals in the post-2015 development agenda, particularly on the occasion of the United Nations summit for the adoption of the post-2015 development agenda, to be held in September 2015.

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[19] National Development Paradigm Steering Committee and Secretariat, "Happiness: towards a new development paradigm" (2013).

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston*

Summary

In the present report, the Special Rapporteur on extreme poverty and human rights focuses on the relationship between extreme poverty and extreme inequality and argues that a human rights framework is critical in addressing extreme inequality.

In the report, the Special Rapporteur provides an overview of the widening economic and social inequalities around the world; illustrates how such inequalities stifle equal opportunity, lead to laws, regulations and institutions that favour the powerful, and perpetuate discrimination against certain groups, such as women; and further discusses the negative effects of economic inequalities on a range of civil, political, economic, social and cultural rights.

The Special Rapporteur also analyses the response of the international community, including the United Nations, the World Bank and the International Monetary Fund, to the challenge of extreme inequality, finding that human rights are absent in the inequality debate and little has been done to follow up on any of the studies or recommendations emerging from the United Nations human rights system.

To conclude, the Special Rapporteur proposes an agenda for the future for tackling inequality, including: committing to reduce extreme inequality; giving economic, social and cultural rights the same prominence and priority as are given to civil and political rights; recognizing the right to social protection; implementing fiscal policies specifically aimed at reducing inequality; revitalizing and giving substance to the right to equality; and putting questions of resource redistribution at the centre of human rights debates.

* Late submission.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 26/3 and is the first report by Philip Alston submitted to the Human Rights Council in his capacity as Special Rapporteur on extreme poverty and human rights.

2. Poverty and wealth are often discussed as if they have very little to do with one another. In the present report, the Special Rapporteur argues that extreme poverty is directly related to extreme inequality, especially, but not only, in relation to wealth and income distribution within countries. He also argues that international human rights law has much to say about existing inequalities and how they can be reduced in order to eliminate extreme poverty. To date, however, the debate over inequality, which has assumed a new vibrancy in the wake of the publication of Thomas Piketty's book *Capital in the Twenty-First Century*, has paid very little attention to the relevance of human rights and much of the discussion that has taken place has been far more concerned with the plight of the middle classes than of those living in extreme poverty.

3. The international human rights community has largely reciprocated the economists' neglect by ignoring the consequences of extreme inequality in the vast majority of its advocacy and analytical work. It does so at its peril, however, since a human rights framework that does not address extreme inequality as one of the drivers of extreme poverty and as one of the reasons why over one quarter of humanity cannot properly enjoy human rights is doomed to fail.

4. The present report is not, therefore, about the ways in which extreme inequality can be tackled. Many excellent analyses are now becoming available in that regard.[1] Nor does the Special Rapporteur seek in this report to survey the range of recommendations that emerges from those analyses. Rather, the goal is to provide answers to two general questions. First, what has the international human rights regime done to address the relationship between extreme poverty and extreme inequality? Second, what might be done to improve the record in this regard?

II. Defining and measuring inequality

A. Definition and recent figures

5. Economic inequality can be used to refer to a range of inequalities relating to the distribution of income (from labour or capital) or wealth (such as financial assets or land) between individuals in a society. Economic inequalities are often expressed using the Gini coefficient of inequality, which varies between 0 (expressing perfect equality) and 1 (expressing perfect inequality: for instance when one individual owns all the wealth in a society), but there are a multitude of other ways to measure and present economic inequalities.[2] The magnitude of the problem of economic inequalities is dependent on what exactly is being measured and how. An indicator measuring only labour income inequality

[1] Anthony B. Atkinson, *Inequality: What Can Be Done?* (Cambridge, Massachusetts, Harvard University Press, 2015); François Bourguignon, *The Globalization of Inequality* (Princeton, Princeton University Press, 2015); Joseph Stiglitz, *The Great Divide* (New York, W.W. Norton and Company, Inc., 2015).

[2] See *Social Panorama of Latin America* (United Nations publication, Sales No. E.14.II.G.6), pp. 97–100.

may be ineffectual if those in the upper quintile or decile derive their income from wealth instead of labour. Measuring wealth inequality by looking at domestic tax data may lead to different results than if wealth distribution is measured by taking only household surveys into account.

6. When analysing inequalities, there are many other dimensions of well-being that can be taken into account apart from income and wealth.[3] Economic inequalities can be distinguished from what can be termed "social inequalities". Social inequalities may refer to the distribution of, for instance, political power, health, education or housing among individuals in a society. In theory, a society may have health equality, for instance, when every individual has access to the same quality and quantity of health care. Social inequalities and economic inequalities may, and often do, interact with, and reinforce, one another, for instance when individuals with higher incomes or their family members have more political power or access to better education than those with lower incomes.

7. Economic and social inequalities are often categorized as "vertical inequalities",[4] referring to the distribution of something such as income, health or power. Vertical inequalities can be distinguished from "horizontal inequalities", which are group-based differences (describing between "whom" the relevant differences occur). Horizontal inequalities may for instance refer to: inequality between men and women, between majorities and minorities, between races, between groups of people with different sexual orientations or between generations. Horizontal inequalities often overlap with vertical inequalities, for instance when women are overrepresented in lower income segments or when a racial minority is underrepresented in political bodies.

8. Current income-inequality figures are quite dramatic. According to a 2008 study by the International Labour Organization (ILO), over the past two decades the income gap between the top and bottom 10 per cent of wage earners increased in 70 per cent of the countries for which data was available.[5] According to a recent Organization for Economic Cooperation and Development (OECD) study, the gap between rich and poor in OECD countries is at its highest level in 30 years.[6] In 2007, the average executive manager in the 15 largest firms in the United States of America earned more than 500 times what the average employee in the United States earned, compared with over 300 times in 2003, and similar patterns can be observed in many other countries.[7]

9. One indicator that gives a detailed overview of income inequalities, at least for most countries in the global North, is the World Top Incomes Database (http://topincomes.parisschoolofeconomics.eu). In the United States, in 2012, the top 1 per cent of earners received almost 20 per cent of the national income. The top 10 per cent of earners received almost half of the national income. These figures contrast sharply with those of previous decades in the United States or with figures in other developed countries. In 1973, the top 1 per cent in the United States earned approximately 8 per cent of the

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[3] See the report by the Commission on the Measurement of Economic Performance and Social Progress (Stiglitz-Sen-Fitoussi Commission) (2009), pp. 14–15.

[4] For a more detailed explanation of the difference between vertical and horizontal inequality, see the United Nations Development Programme, *Humanity Divided: Confronting Inequality in Developing Countries* (New York, 2013), chap. 1.

[5] See ILO, *World of Work Report 2008: Income Inequalities in the Age of Financial Globalization*, p. ix.

[6] Today, the richest 10 per cent of the population in the OECD area earn 9.5 times the income of the poorest 10 per cent, in the 1980s this ratio stood at 7:1 and has been rising continuously ever since. See Federico Cingano, "Trends in income inequality and its impact on economic growth", OECD Social, Employment and Migration Working Papers, No. 163 (2014), para. 1.

[7] See ILO, *World of Work*, p. xi.

national income and the top 10 per cent earned about 32 per cent. In Sweden, in 2012, the top 1 per cent earned around 7 per cent of the national income, from a low of around 4 per cent in 1981, and the top 10 per cent earned around 28 per cent of the national income, from a low of around 22 per cent in 1984. Income inequality in the United States in 2012 is comparable to income inequality in Colombia in 2010, where the top 1 per cent of earners also received about 20 per cent of the national income.

10. In *Capital in the Twenty-First Century*, Mr. Piketty shows that in 1970 the wealthiest 10 per cent in Europe owned about 60 per cent of all wealth, while in the United States the figure was about 65 per cent. Today, that share has increased by 5 percentage points in both places. In January 2015, Oxfam International presented figures showing that the richest 1 per cent of the world have seen their share of global wealth increase from 44 per cent in 2009 to 48 per cent in 2014, with a prediction that it will exceed 50 per cent by 2016. Of the remaining wealth, only 5.5 per cent goes to those outside the top quintile.[8]

11. The United Nations Development Programme (UNDP) has developed several indicators that measure social and horizontal inequalities. An inequality-adjusted human development index, calculated for 145 countries, indicates how achievements in the areas of health, education and income are distributed among a population. UNDP also publishes the coefficient of human inequality, which is a calculation of average inequality across the three dimensions mentioned above. UNDP further measures gender inequality in its gender inequality index. Looking at these different indices, which are not always as intuitive as the income indices described above, it becomes clear that many countries do not even come close to the levels of equality in terms of health, education and gender that exist in the more egalitarian countries. Where Norway had an inequality-adjusted human development index value of 0.891 in 2013, indicating a high level of equality in comparison with other countries, the figures in countries such as the United States (0.755), the Russian Federation (0.685), Chile (0.661), India (0.418) and the Central African Republic (0.203) are much lower. The gender-related development index (female to male ratio of the human development index) ranges from very high levels of equality between men and women in Norway (0.997) to a very high level of gender inequality in Afghanistan (0.602).

B. Economic inequalities and equal opportunity

12. Perfect economic equality is not achievable and arguably not desirable, and there is no reason to object to a certain degree of economic inequality if it reflects differences in effort and talent and is instrumental in achieving greater welfare for society as a whole. There does seem to be a consensus, however, that every human being is entitled — at the very least — to equal opportunity.[9] Two United States Presidents have articulated this principle eloquently. Barack Obama described it as "the idea that success doesn't depend on being born into wealth or privilege, it depends on effort and merit".[10] In 1860 Abraham Lincoln said: "When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor, for

[8] See "Wealth: having it all and wanting more", Oxfam Issue Briefing (January 2015), p. 2.

[9] "Although the principle of formal equality is the basis for social and economic interaction in most modern societies, the social consensus on how much inequality of market outcomes is acceptable, differs considerably among societies. But irrespective of cross-country differences in the level of effective inequality, the increase in inequality over time has given rise to growing concerns in many countries about its social and economic repercussions." See *Trade and Development Report 2012* (United Nations publication, Sales No. E.12.II.D.6), p. 32.

[10] Barack Obama, "Remarks by the President on economic mobility", Washington, D.C., 4 December 2013.

his whole life."[11] Friedrich Hayek, known for his aversion to government intervention to achieve more equality, wrote approvingly of a demand at the "height of the classical liberal movement … that all man-made obstacles to the rise of some should be removed, that all privileges of individuals should be abolished, and that what the state contributed to the chance of improving one's conditions should be the same for all".[12]

13. The problem in many societies is that poor people start the "race of life" at a disadvantage and will meet many more hurdles on their way than others.[13] The situation of high inequality in many countries today certainly does not conform to the idea of "fair equality of opportunity" proposed by John Rawls in *A Theory of Justice*, who wrote: "More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born."[14]

14. From the perspective of equality of opportunity, it is problematic if extreme economic inequalities begin at birth. Mr. Piketty has shown that for those born in France between 1910 and 1960, "the top centile of the income hierarchy consisted largely of people whose primary source of income was work". For those born in France in the 1970s, and even more for those born later, things are different, however. Mr. Piketty has written that the "top centile of the social hierarchy in France today are likely to derive their income about equally from inherited wealth and their own labor". Even more problematic is Mr. Piketty's finding that nearly one-sixth of those born in France today "will receive an inheritance larger than the amount the bottom half of the population earns through labor in a lifetime. (And this group largely coincides with the half of the population that inherits next to nothing)."[15]

15. In principle, economic inequalities that begin at birth can be corrected during one's lifetime. But research has shown that starting life at an economic disadvantage makes it much more likely that one also ends life at an economic disadvantage.[16] A study based on data from a subset of OECD countries found that intergenerational mobility differs strikingly between countries:

> In countries like Finland, Norway, and Denmark the tie between parental economic status and the adult earnings of children is weakest: less than one fifth of any economic advantage or disadvantage that a father may have had in his time is passed on to a son in adulthood. In Italy, the United Kingdom, and the United States roughly 50 percent of any advantage or disadvantage is passed on.[17]

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[11] "Speech at New Haven, Connecticut", in Roy Basler, ed., *The Collected Works of Abraham Lincoln*, vol. 4 (New Brunswick, New Jersey, Rutgers University Press, 1953).

[12] See F.A. Hayek, *Collected Works of F.A. Hayek. Constitution of Liberty* (Taylor and Francis, 2013), p. 155.

[13] "Income inequality specifically is one of the most visible aspects of a broader and more complex issue, one that entails inequality of opportunity. This is a universal challenge that the whole world must address." (See the synthesis report of the Secretary-General entitled "The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet" (A/69/700, para. 68).)

[14] See John Rawls, *A Theory of Justice* (Cambridge, Massachusetts, Harvard University Press, 1971), p. 63.

[15] See Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, Massachusetts, Harvard University Press), pp. 408–409, 421.

[16] "The gap between formal and real equality of opportunities has deep economic roots and far-reaching economic consequences. Inequality that begins in the cradle is not easily redressed through social mobility." (See *Trade and Development Report 2012*, p. 40.)

[17] See Miles Corak, "Income inequality, equality of opportunity, and intergenerational mobility", Discussion Paper No. 7520 (Bonn, Institute for the Study of Labor, 2013), p. 4.

The implications of this phenomenon for a country with relatively low levels of intergenerational mobility, such as the United States, was explained in intuitive terms in 2012 by a leading economist: "The chance of a person who was born to a family in the bottom 10 percent of the income distribution rising to the top 10 percent as an adult is about the same as the chance that a dad who is 5'6" tall having a son who grows up to be over 6'1" tall. It happens, but not often."[18]

16. The differences in intergenerational economic mobility between countries are not random. Studies have shown a clear negative relationship between economic inequalities in a country and intergenerational earnings mobility.[19] Alan Krueger has called this the "Great Gatsby curve". Joseph Stiglitz has written that the ideal of equal opportunity is increasingly a myth in many countries and that the decline in opportunity has gone hand in hand with growing inequality.[20]

C. Inequality and political power

17. In all modern democracies, laws, regulations and institutions influence, and are influenced by, the distribution of economic and other forms of power. Economic inequalities are not only the result of market forces, but equally of political forces that affect laws, regulations and institutions.[21] A full understanding of economic inequalities therefore requires an examination of the exercise of political power.

18. Democracy and civil and political rights are closely linked to the equal division of economic and other factors that are crucial for well-being. Amartya Sen famously argued that democracy and the upholding of related civil and political rights, such as freedom of the press and the right to vote, are connected to the non-occurrence of famines. He suggested that "India's success in eradicating famine is not matched by a similar success in … relieving inequalities in gender relations". According to Mr. Sen, deprivations such as gender inequality "call for deeper analysis, and for a greater and more effective use of mass communication and political participation – in sum, for a fuller practice of democracy".[22] The existence of a democracy and the right to participate in the political process do not guarantee equal opportunity and more equal outcomes. As other authors have argued, the correlative human rights obligations necessary to "constitute democracy and ensure that it functions properly" include more than just the right to vote: the State "may need to take positive steps to protect individuals against other individuals' interference with the right."[23]

19. A major problem in both developing and developed countries is the capture of the political process by powerful groups, and the exclusion of others, leading to laws, regulations and institutions that favour the powerful. Economic inequality is often accompanied by political inequality, meaning that not all citizens are able to equally exercise their democratic rights.[24] According to Oxfam, many people around the world

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[18] See Alan B. Krueger, "The rise and consequences of inequality in the United States", remarks as prepared for delivery, presented on 12 January 2012, p. 3.

[19] See Cingano, "Trends" (footnote 6 above), para. 15.

[20] See Joseph E. Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers Our Future* (New York, W.W. Norton and Company, 2012), p. 18.

[21] See Task Force on Inequality and American Democracy of the American Political Science Association, "American democracy in an age of rising inequality" (2004), p. 4.

[22] Amartya Sen, "Freedoms and needs", *The New Republic*, 10/17 January 1994.

[23] See, for example, Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, (Oxford University Press, 2008), p. 38–39.

[24] "Only some Americans fully exercise their rights as citizens, and they usually come from the more advantaged segments of society. Those who enjoy higher incomes, more occupational success, and

believe that laws and regulations are designed to benefit the rich.[25] According to Mr. Stiglitz, in the context of the United States, government plays a double role in current economic inequality: "It is partly responsible for the inequality in before-tax-distribution of income, and it has taken a diminished role in 'correcting' this inequality through progressive tax and expenditure policies."[26]

20. Inequalities, political capture and the exercise of civil and political rights are closely connected. According to the World Bank, "unequal distributions of control … of political influence perpetuate institutions that protect the interests of the most powerful, sometimes to the detriment of the personal and property rights of others".[27] Writing about the United States, where income inequality is at a historic high,[28] Mr. Stiglitz has argued that the right to participate in the democratic process remains effectively unfulfilled for many poor Americans: "While the days of outright exclusion from the voting process are mostly behind us in the United States, there remains a steady stream of initiatives to limit participation, invariably targeting the poor and less well connected. … The result is that one in four of those eligible to vote — 51 million Americans or more — are not registered."[29] Paul Krugman has written that "extreme concentration of income is incompatible with real democracy".[30]

21. Economic inequalities seem to encourage political capture and the unequal realization of civil and political rights. High levels of economic inequalities "may create institutions that maintain the political, economic and social privileges of the elite and lock the poor into poverty traps from which it is difficult to escape".[31] This vicious cycle may be broken when civil and political rights are enjoyed more equally, as illustrated by the case of Chile. Under the dictatorship of Augusto Pinochet during the 1970s and 1980s, income inequality worsened, then improved after democracy was reinstated (although it is still higher than it was in the 1960s or early 1970s).[32] Another example is Rwanda, where gender equality is enshrined in the Constitution and a quota system has contributed to more than half of the members of Parliament being women, making it the only country in the

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the highest levels of formal education, are the ones most likely to participate in politics and make their needs and values known to government officials." See Task Force on Inequality and American Democracy, "American democracy", p. 5.

[25] "A survey in six countries (Spain, Brazil, India, South Africa, the UK and the US) showed that a majority of people believe that laws are skewed in favor of the rich – in Spain eight out of 10 people agreed with this statement. Another recent Oxfam poll of low-wage earners in the US reveals that 65 percent believe that Congress passes laws that predominantly benefit the wealthy." See Oxfam, "Working for the few: political capture and economic inequality", briefing paper, 20 January 2014, p. 3.

[26] Stiglitz, *The Price of Inequality*.

[27] See World Bank, *World Development Report 2006: Equity and Development* (2005), p. 22.

[28] "Indeed, the top decile share in 2012 is equal to 50.6 percent, a level higher than any other year since 1917 and even surpasses 1928, the peak of stock market bubble in the 'roaring' 1920s." See Emmanuel Saez, "Striking it richer: the evolution of top incomes in the United States" (University of California Berkeley, 2015), p. 3. Available from http://eml.berkeley.edu/~saez/saez-UStopincomes-2013.pdf.

[29] Stiglitz, *The Price of Inequality*.

[30] Paul Krugman, "Oligarchy, American style", *New York Times*, 3 November 2011.

[31] See *Combating Poverty and Inequality: Structural Change, Social Policy and Politics* (United Nations publication, Sales No. E.10.III.Y.1), p. 6.

[32] Dante Contreras and Ricardo Ffrench-Davis, "Policy regimes, inequality, poverty, and growth: the Chilean experience, 1973–2010", in Giovanni Andrea Cornia, ed., *Falling Inequality in Latin America: Policy Changes and Lessons* (Oxford University Press, 2014).

world with more female than male members of parliament.[33] After the introduction of the quota system, the Rwandan Parliament passed legislation to enhance gender equality, "including several laws aimed at preventing and punishing gender-based violence, laws granting more extensive property rights to women and key legislation on women in the workforce."[34]

22. The protection of core labour rights, such as the rights to freedom of association and collective bargaining, is also essential for a more equal division of power and the reduction of economic inequalities. While it is very difficult to measure the causal relationship between the fulfilment of those core labour rights and economic inequalities, various studies point to a relationship between the lack of protection of core labour rights and deunionization and between deunionization and growing wage inequality. The authors of a recent study note: "The neoliberal paradigm in the early 1980s created an extremely negative environment for unions with the abandonment of full-employment policies. Since that time, labor laws across the world have become much less union friendly, and unionizing new establishments has become harder."[35]

23. A sizeable amount of literature sets out the relationship between deunionization and wage inequality. The authors of a World Bank study on the economic effect of adopting or enforcing the two core labour rights mentioned above reported "very robust" findings that unions compress wage inequality. In particular, they found that the wage differentials between skilled and unskilled workers were reduced when unions were present.[36] This is consistent with another study, in relation to the United States, in which the authors concluded:

> When individual union membership is considered, union decline accounts for a fifth of the growth in men's earnings inequality. Adding normative and threat effects of unions on nonunion pay increases the effect of union decline on wage inequality from a fifth to a third. By this measure, the decline of the U.S. labor movement has added as much to men's wage inequality as has the relative increase in pay for college graduates.[37]

A 2013 study about Turkey shows that the fall of unionization in that country resulted in higher wage inequality during the period 1980–2008.[38] Also relevant is the evidence that not only does deunionization affect wage inequality, but wage inequality also affects unionization.[39]

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[33] UNDP, "Promote gender equality and empower women: where we are". Available from www.rw.undp.org/content/rwanda/en/home/mdgoverview/overview/mdg3/.

[34] Elizabeth Bennett, "Rwanda strides towards gender equality in government", *Kennedy School Review* (August 2014).

[35] See Unal Töngür and Adem Yavuz Elveren, "Deunionization and pay inequality in OECD countries: a panel Granger causality approach", *Economic Modelling*, vol. 38 (2014), p. 418.

[36] See World Bank, *Unions and Collective Bargaining: Economic Effects in a Global Environment* (Washington, D.C., 2002), p. 7.

[37] See Bruce Western and Jake Rosenfeld, "Unions, norms, and the rise in American wage inequality", *American Sociological Review*, vol. 76, No. 4 (August 2011), pp. 532–533.

[38] Adam Y. Elveren, "A brief note on deunionization and pay inequality in Turkey", The University of Texas Inequality Project, UTIP Working Paper No. 63 (2013). Available from http://utip.gov.utexas.edu/papers/utip_63.pdf.

[39] "Our findings show that the Granger causality not only runs from union density to inequality (10 countries) but also the other way around (six countries)." (See Töngür and Elveren, "Deunionization", p. 423).

D. Discrimination and inequalities

24. Vertical and horizontal inequalities, including economic inequalities, are often closely related to discrimination. In many countries, the poorest sector of the population coincides with social and ethnic groups that experience discrimination. It is therefore possible that levels of economic inequality in many countries would be lower today in the absence of discrimination.[40] When dealing with economic inequalities, we should therefore pay specific attention to the overlap between economic inequalities and group-based inequalities (horizontal inequalities), because they can indicate discrimination as an important cause of inequality.[41] As Mr. Stiglitz has written: "One of the most invidious — and hardest to eradicate — sources of inequality is discrimination, both ongoing discrimination and the legacy of past discrimination."[42]

25. Although many forms of discrimination are inherently unjust, the correlation between gender-based discrimination and economic inequalities deserves special mention since it potentially affects half of the world's population. While both men and women may experience myriad inequalities, based on factors such as their race, ethnicity, sexual orientation or disability, gender-based discrimination is too often seen to be almost exclusively a women's problem. In its *World Development Report 2012*, the World Bank describes the forms of discrimination that still exist in many countries and that directly affect economic inequality between men and women. According to the World Bank, men and women still have different ownership rights in at least nine countries, and in many countries, women and girls still have fewer inheritance rights than men and boys.[43] In addition, women continue to fare badly in the labour market generally. A stocktaking by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) shows that almost 80 countries maintain restrictions on the types of work that women are permitted to undertake. Also according to UN-Women, at the global level, women's labour force participation rates have stagnated since the 1990s. Currently, only half of women are in the labour force compared to more than three quarters of men. Despite considerable regional variations, nowhere has this gender gap been eliminated: globally, women earn on average 24 per cent less than men. In one study of four countries, lifetime income gaps between women and men were estimated to be between 31 and 75 per cent.[44]

E. Detrimental effects of economic inequalities on the enjoyment of human rights

26. It is clear that economic inequalities severely affect a range of civil, political, economic, social and cultural rights.

27. Economic inequalities can threaten the right to life, liberty and security of the person. A 2009 study using data from 162 countries for the years 1980–2004 found robust

[40] "One interpretation of these findings is that between-group differences account for, and possibly explain, a non-negligible portion of overall inequality." See World Bank, *World Development Report 2006*, p. 43.

[41] "The issue has particular salience when it involves groups, as the influence of social norms and discrimination come to the fore, and the arguments that outcomes may reflect choice have less purchase." See Claire Melamed and Emma Samman, "Equity, inequality, and human development in a post-2015 framework" (UNDP, 2013), p. 3.

[42] Stiglitz, *The Price of Inequality*.

[43] World Bank, *World Development Report 2012: Gender Equality and Development*, p. 159.

[44] See United Nations Entity for Gender Equality and the Empowerment of Women, *Progress of the World's Women 2015–2016: Transforming Economies, Realizing Rights* (2015), p. 71.

support for the relationship between income inequality and personal integrity rights violations across the whole sample of countries.[45] A 2011 study showed a strong association between income inequality and homicide rates based on data from 33 rich and middle-income countries.[46] One overview study concluded that research "has consistently linked income inequality with crime, namely intentional homicides and robbery".[47]

28. Economic inequalities, especially when extreme, can also be closely linked to social unrest and conflict.[48] The Secretary-General has noted that when people perceive inequality to be unfair and excessive, protests and social unrest can result, such as those seen around the world in recent years (see A/67/394, para. 26). A study on poverty and inequality found that "high levels of interlocking inequalities may undermine the realization of civil, political and social rights; they may raise the level of crime and plunge societies into conflict".[49] ILO, in its *World Employment and Social Outlook: Trends 2015*, stated that "rising inequalities have undermined trust in government, with a few exceptions" and that significant falls in trust "in particular if they accompany stagnant or declining incomes, can contribute to social unrest, as several countries in the Middle East have demonstrated, with knock-on effects on social conditions, growth and employment dynamics". Even in ancient times, Plato argued that "if a state is to avoid … civil disintegration … extreme poverty and wealth must not be allowed to rise in any section of the citizen-body, because both lead to disasters".[50]

29. Economic inequalities not only impair civil and political rights but also negatively affect the enjoyment of economic, social and cultural rights. A good example is the right to health. According to the World Bank, "infants from poorer families and children from rural areas are more likely to die than their peers from richer families and urban areas" and the poor are "considerably less likely than the non-poor to have access to high-impact health services, such as skilled delivery care, antenatal care, and complementary feeding."[51] The Stiglitz-Sen-Fitoussi Commission found that "people from lower occupational classes who have less education and income tend to die at younger ages and to suffer, within their shorter lifetimes, a higher prevalence of various health problems" and that "these differences in health conditions do not merely reflect worse outcomes for people at the very bottom of the socio-economic scale but extend to people throughout the socio-economic hierarchy, i.e. they display a 'social gradient'".[52] The World Health Assembly, in its resolution WHA62.14, has also affirmed the recommendation of the Commission on Social Determinants of Health on the need "to tackle the inequitable distribution of power, money and resources".

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[45] Todd Landman and Marco Larizza, "Inequality and human rights: who controls what, when, and how", *International Studies Quarterly*, vol. 53, No. 3 (2009), pp. 715–736.

[46] Frank J. Elhar and Nicole Aitken, "Income inequality, trust and homicide in 33 countries", *European Journal of Public Health*, vol. 21, No. 2 (2011), pp. 241–246.

[47] See Melamed and Samman, "Equity", p. 7.

[48] In a recent report, the Economic Commission for Latin America and the Caribbean noted that a decline in economic disparities may not necessarily lead to less social unrest and conflict. "Chile and Brazil, which have brought polarization and poverty down, have recently been hit by expressions of social unrest. One possibility is that in some of the countries of the region, declining polarization and poverty have boosted the sense of identification with the middle class and fed higher expectations, which could lead to conflicts if not met." (See *Social Panorama of Latin America*, p. 106).

[49] *Combating Poverty and Inequality*.

[50] Quoted in World Bank, *World Development Report 2006*, p. 76.

[51] Ibid., pp. 29 and 31–32.

[52] See the report by the Commission (footnote 3 above), p. 46.

30. Studies have demonstrated the negative effect of income inequality upon the right to education.[53] A 2014 study published by OECD showed that "increased income disparities depress skills development among individuals with poorer parental education background, both in terms of the quantity of education attained (e.g. years of schooling), and in terms of its quality (i.e. skill proficiency)" and that "higher inequality lowers the opportunities of education (and social mobility) of disadvantaged individuals in the society, an effect that dominates the potentially positive impacts through incentives".[54] Another study showed that the youngest children in Ecuador, irrespective of wealth quintile or education of their parents, performed broadly as well as their comparators, but that, as they got older, only those children in the top half of the wealth distribution and with highly educated parents maintained their performance relative to their comparators.[55]

31. Economic inequalities also have an impact on the realization of the right to water. In a 2012 report, the Secretary-General cited an analysis of data from 35 countries in sub-Saharan Africa that found that access to improved sources of water varied from 94 per cent among the richest 20 per cent in urban areas to 34 per cent among the poorest 20 per cent in rural areas (see A/67/394, para. 29). In another study, it was found that the "rate of progress in access to water and sanitation is very uneven among wealth quintiles in many countries, with the poorest two quintiles frequently experiencing lack of improvement while other quintiles experience significant advances".[56]

32. It is clear therefore that the most impoverished suffer the most extreme effects of inequality for a variety of reasons. In part, this is because their influence and capacity to exercise rights is diminished relatively, even if not absolutely, as others become wealthier and gain greater political and economic power, and in part because they are more vulnerable to the harms associated with social unrest, crime and violence.

III. International community's response to inequality

33. In 1999, the authors of a major study concluded that while global inequality was a major problem, it had been largely neglected by traditional investigations into world order. They argued that processes of globalization were exacerbating inequalities both within and among States and eroding the capacity of traditional institutions to manage the resulting threats.[57] But it took well over another decade for the challenge of inequalities to appear high on the list of the international community's priority concerns. In the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", world leaders reaffirmed the need to achieve sustainable development by reducing inequalities. They considered that it was essential to generate decent jobs and incomes that decreased disparities in standards of living (see General Assembly resolution 66/288, annex, paras. 4 and 30).

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[53] See, for example, Melamed and Samman, "Equity", p. 6.

[54] See Cingano, "Trends" (footnote 6 above), paras. 2 and 46.

[55] See World Bank, *World Development Report 2006*, p. 35.

[56] See Inga T. Winkler, Margaret L. Satterthwaite and Catarina de Albuquerque, "Measuring what we treasure and treasuring what we measure: post-2015 monitoring for the promotion of equality in the water, sanitation, and hygiene sector", Public Law and Legal Theory Research Paper Series, Working Paper No. 14-48 (New York University School of Law, 2014), p. 39. Available from http://ssrn.com/abstract=2498064.

[57] Andrew Hurrell and Ngaire Woods, eds., *Inequality, Globalization, and World Politics* (Oxford University Press, 1999).

34. In 2014, the Open Working Group on Sustainable Development Goals presented its proposals for the post-2015 development agenda (see A/68/970 and Corr.1). Proposed goal 10 is aimed explicitly at reducing inequality within and among countries. The specific targets associated with goal 10 include the following: achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average; ensure equal opportunity and reduce inequalities of outcome; and adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.

35. In December 2014, the Secretary-General presented a synthesis report containing his vision for the negotiations of the new sustainable development goals (A/69/700). In the report, the Secretary-General spoke of gross and intolerable inequalities, and argued that income inequality specifically was one of the most visible aspects of a broader and more complex issue, one that entailed inequality of opportunity. He underlined that, as States implemented the new agenda, they must address inequalities in all areas, agreeing that no goal or target be considered met unless met for all social and economic groups. The defining challenge of the time was to close the gap between the determination to ensure a life of dignity for all, and the reality of persisting poverty and deepening inequality (ibid., paras. 65 and 67–68).

36. Although one of the Open Working Group's proposed goals is aimed at reducing inequalities, the Special Rapporteur has observed that human rights norms are almost absent from the proposal (see A/69/297, paras. 45–49). In his synthesis report the Secretary-General attributed far greater importance to them, although he did not explicitly discuss the relationship between inequalities and human rights. The link was however acknowledged in statements calling for a future free from poverty and built on human rights, equality and sustainability, a post-2015 agenda built on the principles of human rights and the rule of law, equality and sustainability, and again in the linking of the challenges of reinforcing human rights, equality and sustainability (see A/69/700, paras. 18, 49 and 82). More generally, the Secretary-General underscored the need to continue to remedy the policy incoherence between current modes of international governance in matters of trade, finance and investment on the one hand, and the norms and standards for labour, the environment, human rights, equality and sustainability on the other (ibid., para. 95). He also acknowledged an indirect link between human rights and inequality by juxtaposing the value of dignity with deepening inequality, thus implying that inequality undermined human dignity.

37. The United Nations has not been alone in recognizing the threat posed by the dramatic growth in inequalities. The Managing Director of the International Monetary Fund (IMF) has warned consistently of the seriousness of the problem. At the Fund's annual meeting in 2014 she said: "There has been a staggering rise in inequality — 7 out of 10 people in the world today live in countries where inequality has increased over the last three decades. And yet, we know that excessive inequality saps growth, inhibits inclusion, and undermines trust and social capital."[58] In February 2014, the Executive Board of IMF discussed a staff paper on fiscal policy as the primary tool for Governments to affect income distribution, including "options for reform of expenditure and tax policies to help achieve distributive objectives efficiently in a manner consistent with fiscal sustainability and recent evidence on how fiscal policy measures can be designed to mitigate the impact of fiscal consolidation on inequality".[59]

[58] Christine Lagarde, "The IMF at 70: making the right choices—yesterday, today, and tomorrow", Washington, D.C., 10 October 2014. Available from www.imf.org/external/am/2014/speeches/pr02e.pdf, p. 3.

[59] See IMF, *Annual Report 2014: From Stabilization to Sustainable Growth* (2014), p. 37.

38. The World Bank has also been active on this front. In its *Annual Report 2014* it noted that "rising inequality in many countries is harmful to economic stability and the sustainability of growth, but well-designed policies can reduce inequality without hurting growth". In January 2015, the Bank's Chief Economist suggested that the "deep and pervasive inequality that exists today can only be condemned". He recalled that the annual income of the world's 50 wealthiest people was close to the total income of the poorest 1 billion, a figure that he characterized as "a collective failure". He called for the consideration of "policies and interventions to curb such extreme inequality", which he said must be done "not only out of a sense of justice, but also because, in a world afflicted with such extreme disparities, its poorest residents lose their voice, even when they have the right to vote. Extreme inequality is, ultimately, an assault on democracy."[60]

39. It seems clear, however, that the deeply expressed concerns about the consequences of inequality are not in fact bringing the sort of deep changes that would be required in the policies of such institutions. For the most part, the response seems to involve the tweaking of traditional policies rather than any change in the fundamental priorities underlying the work of those institutions. This makes it all the more important to inquire into the role that could or should be played by human rights bodies.

IV. United Nations human rights bodies and inequality

40. Economic inequalities have long been a focus of analysis within the United Nations human rights system. But despite the various reports by different special rapporteurs calling attention to the problems associated with extreme inequality, little has been done to follow up on any of the studies or recommendations.

41. In 1992, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the realization of economic, social and cultural rights, Danilo Türk, recommended that a special rapporteur on extreme poverty and human rights be appointed. He characterized income inequality as one of the main challenges of the time, and stated that income distribution within States remained distressingly inequitable. The Special Rapporteur lamented the fact that, in the 1980s, the urban working classes and large segments of the middle class had been impoverished, while groups and businessmen associated in one way or another with the internationalization of capital represented the major economic beneficiaries of the previous 10 years. He found that drastic measures to rectify that income injustice were required and that adequately carrying out poverty-reduction programmes and fulfilling economic, social and cultural rights throughout society was unthinkable without also redressing current income imbalances. He identified taxation as a central means of redressing existing imbalances of income distribution (see E/CN.4/Sub.2/1992/16, paras. 76–84).

42. In its resolution 1993/40, the Sub-Commission, recalling the report by its Special Rapporteur, stated that it was deeply alarmed that the gap between the rich and the poor had more than doubled over the previous three decades and that it was conscious of the impact of inequitable income distribution on the realization of the rights to health, education, housing, food, environmental quality and other economic, social and cultural rights. Also, it reiterated the fundamental principles of equality of treatment, human dignity, equity and justice. Aware that the relationship between income distribution and growing levels of poverty, as well as the violation of human rights, required further in-depth research and

[60] Kaushik Basu, "The state of global poverty", 23 January 2015. Available from www.project-syndicate.org/commentary/global-inequality-persistence-of-poverty-by-kaushik-basu-2015-01#A3YHvE6roHVRbfK.99.

analysis by the human rights community, the Sub-Commission entrusted Asjborn Eide with the task of producing a report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, at both national and international levels. In endorsing the proposal, the Commission on Human Rights, in its resolution 1994/20, called the fair distribution of the benefits of development one of the central purposes of the process of development.

43. In a report to the Sub-Commission in July 1994, Mr. Eide focused on the impact of different patterns of income distribution on the enjoyment of human rights and the remedial action to be taken in cases of intolerable levels of income inequality. He did not examine the question of how the enjoyment of human rights affected the structure of income distribution and avoided discussing the causes of inequality because they had already been the subject of an enormous body of literature of an ideological and dogmatic nature. He argued that gaps in income between rich and poor at the national level should be given attention to the same extent as gaps in income between nations (see E/CN.4/Sub.2/1994/21, paras. 12, 14, 18 and 21).

44. Mr. Eide attached considerable importance to the policies of international financial institutions and was critical of IMF for adopting the position that it should not concern itself with income distribution. As noted earlier, the position of IMF today differs significantly. Mr. Eide criticized the role played by international financial institutions in reducing the power of the State, which he considered to have an essential role to play in ensuring equity in income distribution. In reflecting on the obligations of States in relation to efforts to reduce income inequality, Mr. Eide called for, inter alia, policies to ensure access to land and other productive assets; the provision of public services and other benefits as well as equality of opportunity for all; guarantees of non-discrimination in employment; the implementation of the Convention on the Elimination of All Forms of Discrimination against Women; and the provision of a functioning system of taxation (ibid., paras. 82–83).

45. Subsequent to Mr. Eide's report, the Sub-Commission decided to appoint a Special Rapporteur on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution. José Bengoa was appointed as Special Rapporteur and produced several reports between 1995 and 1998. He reached the following general conclusions (see E/CN.4/Sub.2/1998/8, paras. 4–9):

(a) The growth in the world economy since 1987 has been accompanied by a marked negative distribution of income at both the international and national levels;

(b) When income distribution begins to be concentrated in the hands of the few, relative poverty increases, as does extreme poverty, both in the developed and developing world;

(c) Bad income distribution, when accompanied by economic growth, causes explosive social situations;

(d) Income distribution is very closely linked to the full enjoyment and realization of human rights and persistently bad distribution of income is also the cause of persistent violations of human rights; intolerable degrees of income inequality constitute a violation of the norms of national and international coexistence and therefore of the rights of persons;

(e) Income distribution should become an economic and social indicator used by international financial institutions and other international organizations.

46. Mr. Bengoa also recommended the creation of a social forum to facilitate the participation of States, international organizations, non-governmental organizations and corporations in discussing how to take economic, social and cultural rights into account in

their policies. The Social Forum was set up in 2002 and recent sessions have focused on the rights of older persons (2014) and on the rights of access to medicines in the context of the right to health (2015).

V. An agenda for the future for tackling inequality

47. A number of steps must be taken if the international human rights regime is to be able to respond meaningfully to the threat posed by extreme inequality. Some of these proposals are already well known, while others will require a willingness to step back and acknowledge that the existing system has some deep biases that need to be corrected over time.

A. Rejecting extreme inequality

48. It must be accepted that extreme inequality and respect for the equal rights of all persons are incompatible. Formal recognition of the fact that there are limits of some sort to the degrees of inequality that can be reconciled with notions of equality, dignity and commitments to human rights for everyone would be an important step forward.

B. Committing to reduce extreme inequality

49. Having taken the principled position that there must be limits to inequality, States should then formally commit themselves to policies explicitly designed to reduce, if not eliminate, extreme inequality. Political recognition of the challenge and the holding of a meaningful and sustained public debate on the most appropriate measures to be taken is the starting point for genuine efforts to reduce extreme inequality.

C. Making economic, social and cultural rights central

50. A serious commitment to tackle extreme inequality is only possible in the context of policies and programmes that take the concept of economic, social and cultural rights seriously and give them prominence and priority equal to that of civil and political rights. For all of the achievements that have been accomplished in this domain over the past two decades, the fact remains that economic, social and cultural rights continue to enjoy only second-rank status. There are many contexts in which they are absent, marginalized or only half-heartedly taken on board. In circumstances in which economic, social and cultural rights are not a fundamental part of the overall approach, there are no obvious limits to inequality. Mr. Sen is correct in noting that "the exclusion of all economic and social rights from the inner sanctum of human rights, keeping the space reserved only for liberty and other first-generation rights, attempts to draw a line in the sand that is hard to sustain".[61]

D. Ensuring social protection floors

51. It is difficult to accept that a State that has no basic social protection floor in place, whether so called or not, is meeting its most basic obligations in relation to the economic, social and cultural rights of its citizens and others. Social protection schemes can have a dramatic impact on reducing inequalities. In Brazil, for example, two programmes, the

[61] See Amartya Sen, *The Idea of Justice* (Harvard University Press, 2011) p. 385.

Continuous Benefit Programme and the Family Allowance, jointly contributed to a significant fall in Gini inequality between 1995 and 2004.[62] The Human Rights Council should thus insist on explicit recognition by key actors that there is a human right to social protection. At present, the right to social security and the right to an adequate standard of living, proclaimed so proudly in the Universal Declaration of Human Rights and subsequently often reaffirmed in binding treaty obligations, are ignored or even challenged by the policies advocated by many of the key actors involved in addressing the plight of the hundreds of millions of persons living in extreme poverty. Many leading international organizations and financial institutions still avoid recognizing those rights in their policies and programmes (see A/69/297, para. 51).

E. Implementing fiscal policies to reduce inequality

52. States should reduce inequality by adopting taxation policies that are instrumental to achieving that aim. While preparations for the Third International Conference on Financing for Development Conference, to be held in 2015, and the post-2015 development agenda have brought fiscal policies to prominence in international development debates, the basic principle that tax and development policies go together was already recognized over half a century ago in the Declaration on Social Progress and Development, in which the General Assembly called for the achievement of equitable distribution of national income, utilizing, inter alia, the fiscal system and government spending as an instrument for the equitable distribution and redistribution of income in order to promote social progress (art. 16 (c)).

53. There is greater awareness of this principle today, as reflected, for example, in the Secretary-General's observation that progressive tax policies can play an important role in addressing inequality and poverty and in his exhortation that Governments consider a combination of progressive income taxes and highly redistributive transfers to decrease income inequality and its impact on social development (see A/67/394, para. 56). It cannot be said, however, that current policies in the human rights area have come anywhere near recognizing the fact that tax policy is, in many respects, human rights policy. The regressive or progressive nature of a State's tax structure, and the groups and purposes for which it gives exemptions or deductions, shapes the allocation of income and assets across the population, and thereby affects levels of inequality and human rights enjoyment.[63] Appropriate redistributive measures through taxation and other fiscal policies must be seen as an integral part of a commitment to ensuring full respect for human rights across the entire society. Even IMF now acknowledges that "extreme caution about redistribution — and thus inaction — is unlikely to be appropriate in many cases". It also acknowledges that "on average, across countries and over time, the things that governments have typically done to redistribute do not seem to have led to bad growth outcomes, unless they were extreme" and that "the resulting narrowing of inequality helped support faster and more durable growth, apart from ethical, political, or broader social considerations".[64]

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[62] Fabio Veras Soares and others, "Cash transfer programmes in Brazil: impacts on inequality and poverty", International Poverty Centre Working Paper No. 21 (UNDP, 2006).

[63] International financial institutions should consider human rights obligations and impact when setting conditions and policies in the area of fiscal policy and, in particular, promote progressive rather than regressive taxation and ensure that all States are granted space to conduct counter-cyclical fiscal policies. See the 2014 report of the Special Rapporteur on extreme poverty and human rights to the Human Rights Council (A/HRC/26/28 and Corr.1, paras. 38 and 82 (a)).

[64] See Jonathan D. Ostry, Andrew Berg and Charalambos G. Tsangarides, "Redistribution, inequality, and growth", IMF Staff Discussion Note (2014), p. 26.

F. Revitalizing the equality norm

54. At present, there is no explicitly stated right to equality, as such, under international human rights law. In order to ground equality as an organizing theme in this area of law,[65] human rights bodies and commentators have relied on provisions such as those in the Universal Declaration of Human Rights that proclaim the equal rights of men and women (preamble), that all human beings are born free and equal in dignity and rights (art. 1) and that all are equal before the law and are entitled without any discrimination to equal protection of the law" (art. 7).[66] These provisions have been paired with those dealing with non-discrimination, which is also considered to be one of the central and foundational principles of international human rights law. Virtually all of the core human rights treaties contain explicit provisions on non-discrimination. Also, for the most part, human rights bodies have been careful to emphasize that the norms of equality and non-discrimination require substantive and not just formal equality.

55. However, in reading the jurisprudence generated by most of the treaty bodies, it is difficult to escape certain conclusions. First, article 3 of the International Covenants on Human Rights, which asserts equal rights for men and women, has perhaps not been given its fullest reading, especially in terms of access to resources. Second, for all of the attention given to affirmative obligations to eliminate discrimination, much of the work of the treaty bodies seems unduly confined to a focus on specific violations of non-discrimination. Linked to this is a reluctance to develop notions of distributive equality, which has been much debated in the literature, and would give an important added dimension to the effort to combat extreme inequality. Third, the right to equality needs to be given greater attention so that it is able to add substantively to the jurisprudence of international human rights bodies in ways that it has not, thus far.[67] Finally, the Committee on Economic, Social and Cultural Rights has to date done all too little in practice, as opposed to its analysis in general comments,[68] to explore what might be involved in the prohibitions in article 2 (2) of the International Covenant on Economic, Social and Cultural Rights against discrimination based on social origin, property or birth.[69]

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[65] Equality is such a central principle in the Universal Declaration of Human Rights and the Charter of the United Nations that some have argued "that its absence would make the landscape of human rights look fundamentally different". See Jarlath Clifford, "Equality", in Dinah Shelton, ed., *The Oxford Handbook of International Human Rights Law* (Oxford, 2013), p. 431.

[66] Some of these formulations were later reflected in the provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

[67] More creative approaches, designed to breathe new life into the right to equality, in order to achieve the deeper objectives of the norm and to deal more effectively with the problem of extreme inequality, have been suggested by Sandra Fredman and are deserving of very careful consideration. She argues: "Substantive equality should be developed in a multi-dimensional format, which recognises and addresses the distributional, recognition, structural and exclusive wrongs experienced by out-groups. This yields four main purposes or dimensions of substantive equality: to redress disadvantage, to address stigma, stereotyping, prejudice and violence; to embrace difference and achieve structural change; and to enhance voice and participation." See Sandra Fredman, *Substantive Equality Revisited*, Oxford Legal Studies Research Paper No. 70/2014 (University of Oxford, 2014). Available from http://ssrn.com/abstract=2510287.

[68] See general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

[69] Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, 2014), pp. 192–193.

G. Putting questions of resources and redistribution back into the human rights equation

56. The challenge of putting questions of resources and redistribution back into the human rights equation has several dimensions:

(a) The nature of the obligation to ensure respect for civil and political rights has been treated all too often as implying that resource considerations are not relevant in evaluating governmental compliance with the relevant international obligations. In other words, questions of the availability of resources and equality of access to those resources were largely eliminated from the most vibrant parts of the international human rights system, and relegated instead to the minor league discussions about economic, social and cultural rights. In the latter context, ironically, they were given overwhelming importance, such that the qualification contained in the International Covenant on Economic, Social and Cultural Rights that a State's obligations extended only to the maximum of its available resources is often invoked to excuse basic non-compliance;

(b) This artificial marginalization of questions of resources and distribution from the main human rights debates has also been reinforced by the determination of many States to keep the areas of international economics, finance and trade quarantined from human rights. The World Bank can simply refuse to engage with human rights in the context of its policies and programmes, IMF does the same, and the World Trade Organization is little different. When such issues are raised in the Human Rights Council the argument is invariably heard that it is not the appropriate forum and these matters should be dealt with elsewhere. But when efforts are made to raise human rights in such forums, the refrain is that they should rather be dealt with by the Human Rights Council;

(c) Leading human rights non-governmental organizations need to overcome their deep reluctance to bring issues such as resources and the need for redistributive policies into their research and advocacy. The result of their current failure to do so is that for all of their excellent work in exposing the magnitude of a specific range of human rights violations (overwhelmingly violations of civil and political rights), the deeper structures that keep in place policies and systems that do little to address extreme poverty and do even less to address extreme inequalities are effectively left in place, and the status quo is reaffirmed.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona

Addendum

Mission to Guinea-Bissau (23 February–1 March 2014)*

Summary

The Special Rapporteur on extreme poverty and human rights conducted an official visit to Guinea-Bissau from 23 February to 1 March 2014. In the present report, the Special Rapporteur outlines the challenges that Guinea-Bissau is facing in implementing measures to address poverty and in ensuring the rights of those living in poverty.

Guinea-Bissau ranks as one of the poorest countries in the world, with a consistent decline of investment in essential social services such as health care and education. The Special Rapporteur is particularly concerned about the disproportionate vulnerability of certain groups, especially women, as well as obstacles to poverty reduction such as political instability, corruption and impunity.

This Special Rapporteur provides recommendations to ensure that relevant policies and programmes are implemented to enable those living in extreme poverty to enjoy their human rights on an equal basis with the rest of the population.

* The summary of the present report is circulated in all official languages. The report itself, annexed to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on her mission to Guinea-Bissau (23 February–1 March 2014)

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I. Introduction

1. At the invitation of the Government, the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, visited Guinea-Bissau from 23 February to 1 March 2014. During the visit, the Special Rapporteur collected first-hand information on the human rights situation of people in that country living in poverty.

2. The Special Rapporteur met with the Transitional President, Serifo Nhamadjo; the Transitional Prime Minister, Rui Duarte de Barros; the Minister of Justice, Mamadú Saido Baldé; the Minister of Economy and Regional Integration, Soares Sambú; the Minister of Agriculture, Nicolau dos Santos; the Minister for Women, Family and Social Solidarity, Gabriela Alfredo Fernandes; the Minister of Education, Youth, Culture and Sports, Alfredo Gomes Júnior; the Secretary of State for Food Security, Bilony Nhama Nantamba Nhasse; and representatives of the Commission for Strategic Planning. She met with the Special Representative of the Secretary-General of the United Nations and Head of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS), José Ramos-Horta, and also with the Deputy Special Representative and Resident Coordinator, Gana Fofang, as well as with representatives of United Nations agencies, the donor community, international financial institutions and a range of civil-society organizations.

3. The Special Rapporteur also held meetings with communities living in poverty in villages surrounding Quinhamel, Mansoa, Bissorã, Mansaba and Nhacra, as well as on the Bijagos islands of Bubaque, Canhabaque and Soga. She visited health-care facilities such as Mansoa Hospital in the Oio region and the Bandim Health Project in the Biombo region (Bucumul village).

4. The Special Rapporteur wishes to thank the Special Representative of the Secretary-General, the Deputy Special Representative and Resident Coordinator, the United Nations Development Programme (UNDP) in Guinea-Bissau and, in particular, the Human Rights Section of UNIOGBIS for their excellent collaboration and assistance with the mission. She would like to offer her sincere gratitude to all those who took the time to meet with her, as their contributions were invaluable to the success of her visit. She was particularly struck by the vibrant and active engagement of civil-society organizations working on human rights and poverty issues. She is especially grateful to all those who shared their personal, and sometimes very troubling, experiences of struggling with extreme poverty and social exclusion.

II. General context

5. Since the end of its decade-long armed struggle for independence in 1973, Guinea-Bissau has experienced near-constant political instability, characterized by recurrent high-level political assassinations, coups d'état, political persecution and forced resignation from office by officials, with the latest presidential elections interrupted by a military coup in April 2012. Guinea-Bissau was ranked 176th out of 186 countries on the UNDP Human Development Index in 2012 and has a life expectancy of 48.6 years.[1]

[1] United Nations Development Programme (UNDP), *Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World*, p. 160.

6. According to official figures, the proportion of the population living on less than US$ 2 per day increased from 64.7 per cent in 2002 to 69.3 per cent in 2010.[2] The increase in people living on less than US$ 1 per day was even greater, from 21 per cent to 33 per cent.[3] Moreover, the Special Rapporteur was informed by the authorities that these indicators have quite likely deteriorated since the April 2012 coup d'état.[4] The instability following the coup disrupted the investment plans of traditional donors, such as the European Union, the African Development Bank and the World Bank. They all suspended their programmes, although the European Union continued its humanitarian assistance, directly supporting the population. Additionally, both the European Union and the United Nations imposed travel bans on individuals they identified as responsible for the coup.

7. These developments have had an impact on the human rights situation of the country. Although there were some improvements in social indicators from 2000 to 2006, information gathered in 2013 showed a general decline in these indicators following the April 2012 coup and the suspension of many official development assistance programmes. As a result, Guinea-Bissau will be unable to meet any of the Millennium Development Goals by 2015.

8. The large disparity between the capital, Bissau, and the rest of the country also widened between 2002 and 2010, with the population living on less than US$ 1 per day increasing from 25 to 40 per cent in the regions, compared with an increase of from 9 to 13 per cent in Bissau. Between one third and half of the population live on less than US$ 1 a day in regions other than the Bissau autonomous sector, and absolute poverty is pervasive throughout the countryside.[5] Even in the best-performing region, Bolama/Bijagós, almost half the population lives on less than US$ 2 a day, and in Gabú absolute poverty is close to universal, affecting 84 per cent of the population.[6] Widespread poverty underscores the vulnerability of the population: maternal mortality rates are some of the highest in the world; few people have food security and potable water; and most communities lack access to health care and education.

III. Legal and institutional framework

9. Guinea-Bissau has been led by a Transitional Government since the 12 April 2012 coup. Following the coup, the Transitional Government passed a number of transitional accords and pacts aimed at restoring constitutional governance. Following several postponements, the first round of democratic elections took place on 13 April 2014, with a massive and unprecedented voter participation rate of around 60 to 70 per cent, according to the President of the National Electoral Commission. Planning for the post-election period has begun and the National Commission of Planning and Strategic Coordination has been established to develop an emergency plan addressing urgent needs in the areas of food security, health and education, with support from the United Nations and in coordination with government ministries. Funded equally by the Government and international partners, including the World Bank and the African Development Bank, the plan foresees a budget of approximately US$ 33 million to combat cholera, ensure social and political stability by

[2] Ministry of Economy, Planning, and Regional Integration, *Second National Poverty Reduction Strategy Paper*, DENARP II (2011–2015), p. 31.

[3] Ibid.

[4] Information provided at the meeting with representatives of the Ministry of Economy and Regional Integration.

[5] Ibid., p. 32.

[6] Ibid., pp. 33 and 34.

paying delayed wages of education and health personnel, and carry out food security activities.

10. Guinea-Bissau has actively engaged with human rights monitoring bodies by participating in the universal periodic review (UPR) process in May 2010, engaging with reviews by the United Nations human rights treaty bodies, and extending a standing invitation to all special procedures of the Human Rights Council. The Special Rapporteur welcomes Guinea-Bissau's recent ratification of key human rights instruments, including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; its signing of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Convention on the Rights of Persons with Disabilities and its optional protocol, the Optional Protocol to the Convention against Torture, and the Convention for the Protection of All Persons from Enforced Disappearance; and its acceptance of the individual complaints procedure under the Convention against Torture and the inquiry procedure under the Convention against Torture, all in 2013, as well as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2009.

11. In 2010, the Government developed the Second National Poverty Reduction Strategy Paper (Segundo Documento de Estratégia Nacional de Redução da Pobreza da Guiné-Bissau) (DENARP II). The national priorities and strategic options in this poverty reduction strategy were guided by the vision *Djitu Ten*,[7] which defines the priorities of the country until 2025, and by the lessons learned from the implementation of DENARP I (Documento de Estratégia Nacional de Redução da Pobreza da Guiné-Bissau (2006-2010)). The main objective of the second strategy paper is "to significantly reduce poverty in its many dimensions by creating more opportunities for income, employment and improving access to basic public services of good quality within a strengthened rule of law". This document recognizes that the systemic nature of weak governance in Guinea-Bissau is the joint product of a severe and pervasive lack of administrative capacity, coupled with a history of abuse in the exercise of political power. To address this situation, the Government has articulated its commitment to strengthening the rule of law and national institutions, ensuring a stable and conducive macroeconomic environment, promoting sustainable economic development and raising the level of human capital development.

12. Despite the ratification of international human rights treaties and these robust policy strategy documents, few steps have been taken to transform them into national policies and action. Even in areas where there has been progress in establishing a legislative framework, legislation does not translate into enforceable rights for many people in Guinea-Bissau. There are severe implementation gaps in the application of poverty reduction strategies and laws, including the new laws against female genital mutilation, human trafficking and domestic violence.

13. While the Special Rapporteur takes note of the efforts by Guinea-Bissau to establish a national human rights institution that is truly independent and has the requisite financial and human resources, it is necessary to ensure that the new national human rights commission is established by law and its statute is fully in accordance with the Principles relating to the Status of National Institutions (the Paris Principles). The establishment of the national human rights institution should be done following a participatory process that includes human rights non-governmental organizations, academics and community leaders. Significant investment of human and financial resources is also needed, particularly in

[7] DENARP II (2011–2015), p. 12.

efforts to make the work of the National Human Rights Commission accessible to communities.

IV. General challenges

A. Impunity

14. Impunity constitutes one of the main threats to peace, stability, development and national reconciliation in Guinea-Bissau, and has become a structural component of democratic institutions such as the judiciary, particularly since the adoption of the Amnesty Law in 2008, which covered crimes committed from 1973 to 2004. A subsequent amnesty law was proposed in 2013, exempting from prosecution the military command and all members of the military and paramilitary forces who in any way participated in the preparation and carrying out of the 12 April 2012 coup and all related subsequent acts.[8] The Special Rapporteur welcomes the fact that the second amnesty law was rejected by the National Assembly on 10 September 2013, in line with what had been requested by civil-society organizations and international partners.

15. Combating impunity is a precondition for the sustainable development of the country. Guinea-Bissau should avoid actions that reduce justice in favour of stabilizing institutions, and renounce strategies that indefinitely postpone justice under the excuse of first achieving economic growth.[9] In order to ensure truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur recommends that Guinea-Bissau seriously consider the establishment of an international commission of inquiry supported by the United Nations, as proposed in the concluding document of the first National Conference on Impunity, Justice and Human Rights (July 2013). Social cohesion, peace and stability depend on the extent to which there is rule of law, independence of the judiciary and a modernized military operating under civilian oversight.

B. Corruption

16. Corruption is perceived to be rampant in Guinea-Bissau, as reflected in the 2013 Transparency International Corruption Perception Index ranking of the country in 163th place out of 175 countries.[10] The DENARP II strategy paper rightly acknowledges corruption as being a main obstacle to reducing poverty. The prevailing climate of impunity has fostered a culture of unfettered corruption and participation in illegal activities by some senior State officials. According to information received by the Special Rapporteur, some State officials and civil servants alike engage in nepotism, cronyism and bribery, and are highly susceptible to political interference.

17. The Special Rapporteur wishes to emphasize that corruption seriously undermines the State's capacity to fulfil its human rights obligations, and has a disproportionate impact on people living in poverty. Corruption also compromises the sustainability of the country's natural resources and, therefore, the livelihoods of present and future generations. Although Guinea-Bissau ratified the United Nations Convention against Corruption in 2007, very

[8] "Bissau parliament blocks amnesty bill for coup leaders", available from www.reuters.com/article/2013/09/10/us-bissau-amnesty-idUSBRE9891FW20130910.

[9] See A/68/345, at para. 70.

[10] http://cpi.transparency.org/cpi2013/results.

little effort has been made to implement it. There has not been any serious attempt to hold high-level authorities accountable for recent corruption scandals.

18. The Special Rapporteur recalls that in June 2013, at the sixth annual Joint Consultative Meeting between the Peace and Security Council of the African Union and the Political and Security Committee of the European Union, the parties stressed the need for Guinea-Bissau to take stronger measures to combat impunity and fight against organized crime, drug trafficking and illegal fishing.[11] In addition, they highlighted the importance of the preservation and sustainable management of the natural resources of Guinea-Bissau, including the sustainable exploitation of marine and land resources.

19. According to United Nations reports, Guinea-Bissau has become a transit country for illicit drugs moving from Latin America to Europe, with top-level officials implicated in drug trafficking.[12] For example, in April 2013, Rear Admiral Bubo Na Tchuto, formerly the head of the Guinea-Bissau navy, was arrested by United States anti-narcotics agents in international waters near Cabo Verde and charged with conspiracy related to receiving, storing and transporting large amounts of cocaine.[13] The Chief of General Staff of the Armed Forces, General Antonio Indjai, was formally charged with four counts of conspiracy related to drug trafficking and terrorism.[14]

20. The country has an opportunity to progress. However, that depends on agreeing on a common vision, a vision that moves the country's politics away from short-term power struggles and opportunistic alliances, towards working for the well-being of all members of society, in particular the majority of the population, who live in abject poverty. In corruption cases, the Government must take all measures to ensure that no one is above the law. The Special Rapporteur notes the effectiveness of zero-tolerance policies in ensuring transparency and accountability at all levels; such steps may be necessary to ensure that public funds and the benefits of natural resources are not diverted by illegal means.

C. Neglect of public investments

21. While the Special Rapporteur recognizes Guinea-Bissau's limited resources, a compounding problem has been that the consistent decline of investment in critical social services such as health care and education dramatically impairs the chances of further development and drags the country backward.

22. As a result of the limited budget for overall government expenditure (22 per cent of gross domestic product (GDP), according to estimates), the share allocated to basic social services is among the lowest in the Economic Community of West African States (ECOWAS).[15] The financial resources allocated to education in the national budget have

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[11] www.peaceau.org/uploads/joint-press-statement-aupsc-eu-psc-11-june-2013.pdf.

[12] United Nations Office on Drugs and Crime Guinea-Bissau, "A new hub for cocaine trafficking", *Perspectives*, issue 5, May 2008, available from www.unodc.org/documents/about-unodc/Magazines/perspectives_5_WEB.pdf.

[13] *U.S. v. Na Tchuto et al.* Indictment, United States Department of Justice, available from www.justice.gov/usao/nys/pressreleases/April13/GuineaBissauArrestsPR/U.S.%20v.%20Na%20Tchuto%20et%20al%20Indictment.pdf.

[14] *U.S. v. Antonio Indjai*, United States Department of Justice, www.justice.gov/usao/nys/pressreleases/April13/IndjaiAntoniIndictmentPR/U.S.%20v.%20Antonio%20Indjai%20S6%20Indictment.pdf.

[15] Ministry of Economy, Planning, and Regional Integration, Second National Poverty Reduction Strategy Paper, DENARP/PRSP II (2011–2015), p. 19.

declined sharply since 1987.[16] In 2006, for example, less than 4 per cent of government spending was allocated to education (US$ 10 per capita) as opposed to 6.7 per cent (US$ 14) in Niger.[17] In 2007, per capita expenditure on health was estimated at US$ 4 in Guinea-Bissau, compared with an average of US$ 11 for low-income countries and US$ 34 for Africa.[18] In 2011, the budget allocated to education and health was a mere 20.7 per cent of the total, as opposed to the international recommendation of 40 per cent.[19]

23. The lack of investment in critical social services raises serious concerns about the enjoyment of the rights to education and health in the country. There are insufficient schools and health infrastructure, the personnel are not adequately trained and the distribution of the existing resources is unequal. For example, at a national level, 56.3 per cent of students take more than one hour to access the nearest secondary school and 50.8 per cent of the population take more than an hour to reach the nearest health centre. For Bissau, these figures are only 24.9 per cent and 24 per cent respectively.[20] Moreover, as reported in 2007, only 40.5 per cent of primary teachers have diplomas.[21]

24. Under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, States parties are legally obliged to take measures to ensure the progressive enjoyment of economic, social and cultural rights. Guinea-Bissau must spend the "maximum available resources" on the realization of economic and social rights, such as health and education. Ultimately, the country cannot develop without ensuring that funds stay out of the hands of corrupt officials and are invested in the country's most vital asset: its population. During the visit, the Special Rapporteur met doctors, nurses and teachers who work tirelessly for their people, despite not receiving a salary for months at a time. While commending their efforts, she calls on the State to ensure that public workers, including those working in critical sectors such as health and education, receive their salaries regularly and as a matter of priority.

D. Depletion of natural resources

25. Most of the population of Guinea-Bissau live in rural areas and their livelihoods depend on the sustainable use of natural resources. The conservation of the environment is critical to poverty reduction and the enjoyment of human rights. Farming and fishing activities represent about 46 per cent of GDP. Guinea-Bissau is a country rich in natural resources, including mineral deposits, rich bio-diversity and extensive fishing and forest areas (72 per cent of the land area)[22] that constitute an enormous potential for sustainable development.

26. Corruption, impunity and lack of compliance with existing legislation is leading to the unsustainable depletion of natural resources, which will have a major impact on the livelihoods of the majority of the population and negatively affect the potential to diversify sources of income. On the mainland, the nation's forest resources are under threat due to illegal logging activities. The Special Rapporteur visited the Bolama-Bijagos region, and witnessed the impact of illegal fishing and logging of mangroves in protected marine areas.

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[16] International Monetary Fund, Guinea-Bissau poverty reduction strategy paper, 2007, p. 17.

[17] DENARP II (2011–2015), pp. 64-65.

[18] World Health Organization, *World Health Statistics 2010*, pp. 132,133, 138 and 139.

[19] DENARP II (2011–2015), p. 19.

[20] Ministério da Economia, do Plano e Integração Regional, Inquérito Ligeiro para Avaliação da Pobreza, ILAP II, 2010, pp. 53 and 78.

[21] International Monetary Fund, *Guinea-Bissau Poverty Reduction Strategy Paper*, 2007, p. 18.

[22] UNDP, *Human Development Report 2013*, p. 193.

Moreover, communities potentially affected by the exploitation of natural resources are not able to effectively and meaningfully participate in decision-making processes concerning natural resource exploitation.

E. Gender inequality

27. The widespread gender inequality in the country is a major obstacle to sustainable economic and social development. Gender inequality and discrimination are among the main drivers of poverty and vulnerability, particularly in rural areas. The low human development indicators in Guinea-Bissau impact women in particular. The gender inequality gap continues to be very wide, placing the country 176th out of 186 countries on the Gender Inequality Index (2012). Guinea-Bissau is an extremely patriarchal society which has historically been indifferent to women's rights and needs. In visiting rural communities, the Special Rapporteur was struck by the extent to which the well-being and the economy of the community and the households rely entirely on women.

28. The country cannot progress in crucial areas such as poverty reduction, sustainable development or human rights enjoyment without significant measures to ensure the equal status of women in society. This is not only a matter of basic justice and human rights, but also a prerequisite for improving the lives of all in Guinea-Bissau. Evidence shows that empowerment of women is a key factor in economic growth and development. This effort must begin now without delay.

V. Situation of groups particularly vulnerable to poverty

29. The Special Rapporteur identified the following groups as being particularly vulnerable to poverty and requiring specific initiatives to overcome the impacts of economic deprivation and social exclusion.

A. Women and girls

30. Women and girls are often denied the full enjoyment of their human rights. Disparities and lack of opportunities for women can be seen in all areas and sectors. Girls are deprived from an early age of the possibility of achieving their full potential and of acquiring the tools to lift themselves out of poverty. It is striking that the literacy rate of the male population is 68.2 per cent, compared with 40.6 per cent for the female population.[23] Women and girls are often solely responsible for unpaid care work and for providing for their families in situations of extreme scarcity and their reward for a life of indefatigable effort is the complete denial of their rights, such as the rights to education, health and physical integrity. Compared with men, women have worse access to health services, a higher incidence of HIV/AIDS, lower levels of school enrolment and literacy, reduced incomes, higher rates of unemployment and greater difficulties in overcoming poverty.

31. Compounding their situation is the widespread prevalence of sexual and gender-based violence and a high level of impunity. All around the country, women are victims of those abuses, without having access to protection, justice or remedies. Physical, psychological and sexual violence against women is widespread, but remains underreported. Domestic violence is rarely brought to the attention of the legal authorities.

[23] United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics, Adult and Youth Literacy, 1990-2015 Analysis of data for 41 selected countries, 2012, pp. 14 and 15.

For example, from 2006 to 2010, a total of 23,193 cases of violence against women, including homicide, physical violence, sexual violence, psychological violence and excision were reported to the police across the country.[24] Thirty-seven per cent of these cases were reported in the capital, Bissau, where the presence of law enforcement and judicial officials is stronger than in the regions, and transportation is more accessible.[25] Cultural norms and taboos, lack of law enforcement officials and lack of economic resources often deny women any possibility of seeking redress and seeking justice for those responsible.

32. Female genital mutilation, which is an assault on women and girls' physical integrity and violates their right to health, often has an impact on education and is widespread in certain communities. In Guinea-Bissau the prevalence of this practice is linked to poverty, because performing excisions may be the sole source of income for some women. The prevalence and the increase in the number of reported cases may reflect an unacceptable retrogression in women's rights. As measured in 2011, 50 per cent of women in Guinea-Bissau between 15 and 49 years of age have been genitally mutilated, while 39 per cent of women aged between 15 and 49 years of age have at least one mutilated daughter.[26]

33. The practice of forced marriage is common in Guinea-Bissau, especially in the Gabú and Bafatá regions.[27] On average, between 7 and 10 per cent of girls are forced into marriage before they reach the age of 15 years[28] and 29 per cent are married before reaching 18 years of age.[29] It is also evident that there are some differences according to economic status, with 37 per cent of women from very poor households married before the age of 18.[30] In many instances, the marriage is a direct result of poverty, with the male head of household "selling" the girl in return for money, land or cattle. The Special Rapporteur is concerned that, in many cases, early marriages are the result of trafficking, in other words, girls being sold or traded for the purpose of marriage, usually via the threat or use of force, fraud or coercion.[31]

34. Anecdotal reports paint a tragic picture: in 2011 alone, members of a church in the Tombali region were beaten for sheltering 20 girls aged 14 to 16 who had run away to avoid forced marriages to older men, a 15-year-old girl was beaten to death for refusing to marry a much older man, and a girl and two of her female relatives were beaten for objecting to her wedding on the grounds that the girl was under age. No legal or law enforcement actions were taken in any of these cases.[32] Although marriage under the age of

[24] Ministry of the Interior, UN-Women, United Nations Population Fund, UNDP, UNIOGBIS, *Um Retrato da Violência contra Mulheres na Guiné-Bissau* (Study on violence against women in Guinea-Bissau), 2011, p. 13.

[25] Ibid.

[26] United Nations Children's Fund (UNICEF), *State of the World's Children, 2013: Children with Disabilities*, p. 133.

[27] Ministry of the Interior, UN-Women, UNFPA, UNDP, UNIOGBIS, Um retrato da violência contra mulheres na Guiné-Bissau, (Study on violence against women in Guinea-Bissau), 2011, p. 19.

[28] Republic of Guinea-Bissau, UNICEF, Guinée-Bissau, Enquête par grappes à indicateurs multiples (Multiple indicator cluster survey), 2006, p. 167.

[29] 4º Inquérito por amostragem aos Indicadores Múltiplos (MICS) & 1º Inquérito Demográfico de Saúde Reprodutiva (IDSR), Resultados Preliminares, 2010, p. 18.

[30] Ibid.

[31] UNICEF, *Child Trafficking in Guinea-Bissau. An Explorative Study, 2010*, p. vii.

[32] Amnesty International, *The State of the World's Human Rights, 2011*, p. 159.

14 years for girls and forced marriage are forbidden by law in Guinea-Bissau, this law is broken among all ethnic groups in the country.[33]

35. Other factors affecting the right to health and education of women are the prevalence of early pregnancy and early marriage. In 2011, 31 per cent of women between 20 and 24 years of age had given birth before reaching the age of 18, with the adolescent birth rate measured at 137 births per 1,000 adolescent girls from 15 to 19 years of age.[34] The early pregnancy rate is slightly higher than the rate of early marriage. Much more needs to be done to sensitize some ethnic groups on the negative impact of these traditional practices on women's well-being. State authorities, health-care personnel and law enforcement officials must demonstrate the strongest commitment to end all forms of harmful traditional practices. The neglect of sexual and reproductive health in the country has an enormous impact on the health and social well-being of women. For example, women reportedly face high rates of obstetric fistula as early as at the age of 15 due to lack of access to emergency obstetric care and may be discriminated against and socially excluded for the rest of their lives as a result of their condition.[35] The lack of attention to, data on and resources dedicated to sexual and reproductive health perpetuate the lack of understanding by authorities and health personnel of the tremendous negative impact on women.

36. The Special Rapporteur recognizes that there has been some progress in establishing legislative and policy frameworks to address gender inequality and combat violence against women. In accordance with the recommendations of the Human Rights Council's universal periodic review, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Woman, and with technical and financial support from United Nations partners, Guinea-Bissau adopted the Law to Prevent, Fight and Suppress Female Genital Mutilation (Law No. 14/2011), and the Law to Prevent and Combat the Traffic of Persons, Particularly Women and Children (Law 12/2011). The Government has also finalized the National Policy on Gender Equality and Equity, a framework for promoting, coordinating and following up on equity in all sectors. Collaboration with the specialized Parliamentary Committee on Women and Children resulted in the Law against Domestic Violence being adopted by the National Assembly in July 2013; it was promulgated by the President in January 2014. Recently, the Transitional Government approved the National Plan to End Gender-based Violence (2014-2016) following a wide-ranging dialogue with women's organizations, human rights defenders, civil society organizations and United Nations partners. Other important steps include the 2012 declaration by the National Islamic Conference for the abandonment of female genital mutilation, and the symbolic signing, in February 2013, of a fatwa condemning female genital mutilation, by the Speaker of the Parliament, the President of the National Committee for the Abandonment of Harmful Practices and representatives of 130 religious leaders throughout the country. There are no recent data to indicate whether rates of violence against women and the incidence of harmful traditional practices have dropped.

37. Despite being the pillar of society in Guinea-Bissau, women continue to be under-represented in decision-making positions, placing the country among the weakest-performing States in this respect in the ECOWAS region.[36] In the April 2014 general elections, women won 14 out of 102 legislative seats, or 13.7 per cent of the seats. Ministers have not yet been appointed to the new Government. The current Transitional Government includes just two women (compared with 28 men), accounting for 7.4 per cent of the total membership in a country where women make up 51.5 per cent of the

[33] Ibid.
[34] UNICEF, *State of the World's Children, 2013*, p. 141.
[35] DENARP II (2011–2015), p. 21.
[36] UNDP, *Human Development Report 2013*, p. 158.

population.[37] This severe under-representation is reflected at the local, community and household levels, where women are largely unable to participate meaningfully in decision-making processes.

38. Women's access to land and economic resources is also very limited. Although they are the main users of the land as farmers and producers, and domestic law confirms the equality of the sexes, in practice, women do not have secure land tenure. Rather, they are restricted to secondary land rights, whereby their rights to use the land are gained only through their husbands or other male family members.

39. Despite being the primary workers of the land, producing food and resources from it, single, widowed or abandoned women have less access to land and economic opportunities. Without secure rights and access to land and productive resources, rural women can easily fall into even deeper poverty, and they face huge challenges to working their way back to even subsistence levels for their families.

40. Women's political participation at all levels must be improved and supported without delay. Although women's equal presence in decision-making bodies is only a first step towards gender equality, it is a necessary one, to ensure women's voices are able to be heard in all matters that affect them. Critical measures must be taken by the newly elected authorities as a matter of priority or women's disempowerment will be perpetuated.

41. There are numerous examples of other developing countries, including post-conflict countries, which have managed to increase the political participation of women exponentially within a short time. The Special Rapporteur suggests that Guinea-Bissau learn from such efforts in addressing its own challenges, although of course its own measures must be carefully chosen and informed by the country's social, political and cultural context.

42. The new Government must make it a priority to ensure equality of women in all spheres of life and consolidate a legal framework in which their role at all levels of decision-making bodies, from the electoral commissions to the local governments, is increased, facilitated and supported.

B. Children and youth

43. Guinea-Bissau has an extremely young population, with 47 per cent of the total population under 18 years of age.[38] Approximately 65 per cent are under 25 years of age and 73 per cent are under 30 years of age.[39] Females constitute a slightly higher percentage of the population (51.8 per cent, compared with 48.2 per cent for males).[40] Despite Guinea-Bissau being an extremely young country, the rights of children and youth have been consistently neglected. Progress in their enjoyment of rights has not only been slow, but in some cases, there have been retrogressions.

44. For example, the percentage of children whose births are registered declined from 39 per cent in 2006 to 24 per cent in 2010, limiting their access to basic services. Child poverty also deepened their vulnerability to violence, exploitation and abuse, in particular trafficking, child labour, child marriage and commercial sexual exploitation.

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[37] Ibid.

[38] UNICEF, *State of the World's Children, 2013*, p. 121.

[39] National census, **Error! Hyperlink reference not valid.**

[40] Ibid.

45. Mortality rates for children under 5 in Guinea-Bissau are the seventh highest in the world, with 161 child deaths per 1,000 live births in 2011.[41] Tragically, one in 10 children dies before his or her first birthday and one in 6 before reaching the age of 5.[42] The main causes of child mortality are neonatal complications, malaria, acute respiratory infections and diarrhoea—all highly preventable.

46. Malnutrition, which has always been a major public health problem in Guinea-Bissau, continues to be one of the main underlying causes of infant mortality and morbidity: 32 per cent of children suffer from moderate to severe stunting as a result of chronic malnutrition, while 5 per cent are severely underweight.[43] According to a 2012 SMART[44] nutrition survey, the prevalence of acute malnutrition is 6.5 per cent nationally, reaching as high as 9.8 per cent in some areas.[45] In 2013, the situation further deteriorated, in part because of food insecurity, affecting mostly children under the age of 5. Despite a significant improvement in breastfeeding prevalence (from 38 per cent to 67 per cent between 2010 and 2012), infant feeding practices are one of the causes of this situation.[46]

47. The worst forms of child labour are prevalent in the country. In 2010, 57 per cent of children between 5 and 14 years of age were engaged in child labour.[47] Although the labour law set the minimum employment age at 14 and prohibits heavy or dangerous labour for children under 18, the law is not enforced. A comprehensive policy to combat the worst forms of child labour is lacking and the Government has not established a list of hazardous occupations that are prohibited for children.[48]

48. The number of reported cases of child trafficking seems to have increased in 2013 compared with previous years owing to greater poverty and the inability of families to feed and take care of their children. Some child-trafficking victims are reportedly being forced to work on the streets during the day begging for their masters at Koranic schools, and study at night, while others are reported to be working in cotton fields in Ziguinchor (Senegal) and surrounding areas.[49]

49. Significant work must be done to guarantee children's right to education, particularly in relation to secondary education. Only 20 per cent of girls and 27 per cent of boys attend secondary school.[50] Girls are also more likely to experience educational deprivation than boys—for various reasons, including early marriage and teenage pregnancy.[51] The number of schools is inadequate and children are required to walk or travel long distances in order to continue attending school past the primary level. The low quality of education, especially in rural areas, is of particular concern, with poor, rural children less likely to complete primary education.

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[41] UNICEF, *State of the World's Children, 2013*, pp. 99-101.

[42] Ibid.

[43] UNICEF, *State of the World's Children, 2013*, p. 104.

[44] Standardized monitoring and assessment of relief and transitions.

[45] www.wfp.org/countries/guinea-bissau/overview.

[46] International Baby Food Action Network (IBFAN), Report on the situation of infant and young child feeding in Guinea-Bissau, 2013, p. 3.

[47] UNDP, *Human Development Report 2013*, p. 177.

[48] United States Department of Labor, Bureau of International Labor Affairs, *2012 Findings on the Worst Forms of Child Labor*, www.dol.gov/ilab/reports/child-labor/guinea-bissau.htm.

[49] UNICEF, *Child trafficking in Guinea-Bissau: an explorative study, 2010*, p. 13.

[50] UNICEF, *State of the World's Children, 2013*, p. 117.

[51] Ibid., p.129.

VI. Challenges to the enjoyment of specific rights by those living in poverty

50. While people living in poverty face challenges in relation to a wide range of rights, this section addresses those rights that the Special Rapporteur perceived as particular challenges during the visit.

A. Right to health

51. The Constitution of Guinea-Bissau provides for the promotion of the physical well-being and mental health of the population, including through prevention, progressive access to medical treatment and improvement of the medical sector. Nonetheless, the health system is not functioning. The Government prepared a National Health Development Plan II for 2008-2017, which was not implemented owing to political instability. The health sector lacks a basic law on health, with the most recent efforts to establish one abandoned shortly after the coup d'état of 2012. Public health expenditure has been decreasing over the past 15 years. In 2010, an estimated 1 per cent of the country's GDP was spent on health,[52] the second-lowest expenditure among ECOWAS member States.

52. There is a lack of investment in public health centres: 44 per cent of the population must walk for more than an hour to reach the closest primary health centre.[53] Moreover, health centres and State hospitals lack basic equipment. The Simâ Mendes National Hospital, the referral hospital for the country, faces severe constraints, such as power cuts, shortages of medicines and food, and intermittent strikes by health workers over poor working conditions and non-payment of salaries and subsidies. Simão Mendes has insufficient funding to maintain its generator and buy fuel from private sources, and the frequent power shortages mean that operating theatres cannot run and the ability to maintain sanitary conditions is severely compromised. Health posts in the regions are merely symbolic, with most of them empty. Those which are "functioning" lack medical personnel, basic equipment and medicines and they are not accessible due to distance and the costs of travel and treatment.

53. The extremely high level of maternal mortality in the country presents a dire situation. Maternal mortality rates rank eighth highest in the world, with an estimated 790 maternal deaths per 100,000 live births.[54] It is deplorable that, in 2014, two women die per day while giving birth. Nationally, 6 out of 10 women have no access to a skilled attendant while giving birth—one of the most important factors in helping women survive complications during and after delivery.[55] Unsanitary and run-down facilities, a critical shortage of health personnel, an inadequate supply system for medicines, geographic barriers and the unaffordable cost represent major obstacles for women's access to care.

54. According to the Human Development Report 2013, in Guinea-Bissau life expectancy at birth is 48 years.[56] Guinea-Bissau ranks second lowest among the ECOWAS

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[52] UNDP, *Human Development Report 2013*, explanatory note on the 2013 HDR composite indices, p. 164.

[53] Inquérito Ligeiro para Avaliação da Pobreza Guinea-Bissau, ILAP II-2010, Instituto Nacional de Estatística, p. 5.

[54] UNDP, *Human Development Report 2013*, explanatory note on 2013 HDR composite indices, p. 158.

[55] Ministério da Economia, do Plano e Integração Regional, Instituto Nacional de Estatística, 4º Inquérito por amostragem aos Indicadores Múltiplos (MICS), 2010, p. 14.

[56] UNDP, *Human Development Report 2013*, explanatory note on 2013 HDR composite indices, p. 3.

countries (Sierra Leone being the lowest). However, life expectancy due to inequality drops by 22 per cent, placing Guinea-Bissau in the last position in ECOWAS.[57]

55. HIV remains a significant problem. The national prevalence rate among adults is 5.3 per cent, with women disproportionately affected when compared to men: 6.9 per cent versus 2.4 per cent.[58] These rates are higher than the HIV prevalence in the West and Central African region (estimated by UNAIDS at 2 per cent or under in 12 countries in 2009).[59] The lack of anti-retroviral treatment, as a result of the suspension of support from the Global Fund to Fight AIDS, Tuberculosis and Malaria, is of particular concern. The suspension of the Global Fund programme had a major impact in 2013 as the country suffered a lack of test kits for almost six months and a reduction of treatment preventing mother to child transmission.[60] During that period, only 17.4 per cent of affected women and 11.7 per cent of affected children benefited from treatment. The latest prevalence rates for pregnant adolescents/women age 15 to 24 vary between 3 and more than 10 per cent depending on the region.[61]

B. Right to education

56. The educational system in Guinea-Bissau is very weak. More than 45 per cent of school-age children do not have access to school, owing to lack of infrastructure and of qualified and motivated teachers.[62] Only 67 per cent of children aged between 7 and 12 years, and 24 per cent of secondary school children, are enrolled in school.[63] Owing to the high repetition rate, some 37 per cent of children attending primary school are aged between 13 and 17. [64] Thirty-seven per cent of teachers have no formal teaching skills and only 14 per cent of schools offer a complete primary cycle of six years.[65] The inadequate curriculum, school manuals and school infrastructure, and frequent and lengthy strikes by teachers contribute to high dropout and repetition rates, especially for girls.

57. The Special Rapporteur welcomes the fact that the number of children in primary schools more than doubled between 2000 and 2010, with gross enrolment increasing from 70 to 117 per cent.[66] However, educational outcomes remain extremely poor, as demonstrated by the 2011 national examination results (76 per cent of children failed ninth grade) and the low rate of 40 per cent literacy among women aged 15 to 24.[67] Overall, 45.8 per cent of the population of Guinea-Bissau is illiterate.[68]

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[57] Ibid., p. 4.

[58] UNICEF West and Central Africa Regional Office, Annual report 2012 for Guinea-Bissau, p. 2.

[59] UNAIDS, Regional fact sheet. Sub-Saharan Africa, 2010, www.unaids.org/documents/20101123_FS_SSA_em_en.pdf.

[60] Ibid., p. 21.

[61] Secrétariat National de Lutte contre le SIDA, *Rapport d'activité sur la riposte Guinée-Bissau 2012*, p. 9.

[62] UNICEF West and Central Africa Regional Office, Annual report 2012 for Guinea-Bissau, p. 2.

[63] República da Guiné-Bissau, Ministério da Economia, do Plano e Integração Regional, Instituto Nacional de Estatística, 4º Inquérito por amostragem aos Indicadores Múltiplos (MICS), 2010, p. 16.

[64] UNICEF Guinea-Bissau, Situation of women and children in Guinea-Bissau, www.unicef.org/wcaro/wcaro_bissau_CPPres08-12.pdf.

[65] Ibid.

[66] UNICEF, *A Review of Equity and Child Rights in Guinea-Bissau, 2012*, p. 11.

[67] Ministério da Economia, do Plano e Integração Regional, Instituto Nacional de Estatística, 4º Inquérito por amostragem aos Indicadores Múltiplos (MICS), 2010, p. 16.

[68] UNDP, *Human Development Report 2013*, p. 173.

58. If prevailing patterns of age-specific enrolment rates persist throughout the child's life, a child of school entrance age can expect to receive between 9 and 10 years of schooling. Few students transition from primary to secondary education. Only 12 per cent of girls complete the primary cycle (18 per cent of boys) as a result of girls' work in household chores, agriculture and small businesses.[69] Even fewer students transition from secondary to tertiary education. Data collected between 2005 and 2012 indicate that, on average, people aged 25 and older have received 2.3 years of education.[70]

59. The Constitution describes the elimination of illiteracy as a fundamental task,[71] guarantees every citizen the right to an education[72] and provides that the State will gradually promote free education at every level.[73] Yet, in reality, students face financial barriers, including (a) requests by teachers to contribute to their survival because the State does not pay teachers' salaries on a regular basis; (b) purchase of educational materials; (c) transportation to school. Additionally, in the past three years, at least one third of each academic year was lost as a result of repeated teachers' strikes. On 30 September 2013, the first day of the academic year, State school teachers started a 60-day strike to demand full payment of eight months of salary arrears and better working conditions. The strike was lifted on 16 December 2013 following an agreement between the two teachers' unions and the Transitional Government for the payment of four months of salary arrears.

60. Other factors hampering access to education are the prevalence of child labour, early pregnancy and early marriage. Child labour affects both boys and girls, while early pregnancy and marriage affects girls predominantly. In 2010, 57 per cent of children between the ages of 5 and 14 were engaged in child labour.[74]

C. Right to adequate food

61. Food security is another critical concern. An in-depth analysis of food security and vulnerability was conducted in 2010 throughout the country and provided mapping of rural households in food insecurity.[75] In the most severely affected regions of Quinara, Tombali, Oio, Biombo and Bijagos, the levels of food insecurity were as high as 40 per cent in 2012, representing around 50,000 households.[76] Food access and availability became increasingly difficult for the most vulnerable members of the population. The southern region had the highest prevalence of food insecurity, followed by the north and east.[77] Lowland rice fields in the Gabú and Oio regions were flooded; and 2,375 hectares of rice were destroyed.[78] Rice production in mangrove areas decreased as a result of the flooding of 3,350 hectares in

[69] UNICEF Guinea-Bissau, Situation of women and children in Guinea-Bissau, www.unicef.org/wcaro/wcaro_bissau_CPPres08-12.pdf.

[70] UNDP, *Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World*, p. 146.

[71] Art.16 of the Constitution.

[72] Art. 41 of the Constitution.

[73] Ibid.

[74] Percentage of children ages 5–11 who, during the reference week, did at least one hour of economic activity or at least 28 hours of household chores, or children ages 12–14 who, during the reference week, did at least 14 hours of economic activity or at least 28 hours of household chores. (UNDP, *Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World*).

[75] World Food Programme, Boletim, Guiné-Bissau, Sistema de seguimento da seguranca alimentar—Inquérito FSM, November 2011, No. 1, p. 1-3.

[76] Ibid.

[77] Ibid.

[78] Ibid.

the Tombali region. The drought caused by the influence of the Sahel drought affected the production of cereals in the Gabú and Bafata regions, and resulted in the loss of 15 per cent of the yields of agricultural fields. Pest attacks in mangrove (Tombali region) and lowland rice fields (Bafata region) devastated about 1,254 hectares, causing a 25 per cent loss in production. Populations faced a significant decrease in their purchasing power.[79]

62. A National Nutrition Policy was validated in February 2014. It constitutes an important prerequisite for Guinea-Bissau to adhere to the global Scaling Up Nutrition initiative, which enables States to mobilize support and access resources for nutrition improvement in their respective countries. The Policy has yet to be endorsed by the Council of Ministers.

63. Guinea-Bissau has extremely low agricultural productivity and is dependent on one crop (the cashew nut), which creates a major risk of food insecurity, and even famine, if the crop fails or market prices drop. Despite the size of the agricultural sector, local food production is insufficient to meet national requirements for various reasons, including poor transport infrastructure, underdeveloped marketing systems, lack of access to credit and a lack of agricultural inputs and irrigation facilities.

64. In 2013, the cashew nut sector faced an extraordinary crisis, with the Terms of Trade going from one kilo of rice in exchange for one kilo of cashew nuts in 2011, to one kilo of rice in exchange for three kilos of cashew nuts in 2013. This resulted in decreased household food stocks in some regions.

65. The agricultural sector could be a motor of sustained economic growth, but this cannot happen without an improved agricultural and rural infrastructure, which would also have the benefit of increasing productive capacity, boosting livelihoods and increasing food security.

66. While the development of infrastructure is essential, environmentally sustainable development must be the goal. In Guinea-Bissau, forests and fisheries are at risk of depletion. Greater measures must be taken to ensure the preservation of natural resources for future generations and to address the degradation of the environment. The country's natural resources rightfully belong to all the people of Guinea-Bissau, and must provide food and livelihoods for them for many generations to come.

D. Rights to water and sanitation

67. Having access to safe drinking water and sanitation is central to living a life of dignity and upholding human rights. As recognized by the General Assembly and the Human Rights Council, the right to water and sanitation derives from the right to an adequate standard of living, enshrined in articles 25 of the Universal Declaration of Human Rights and 11 of the International Covenant on Economic, Social and Cultural Rights.

68. In Guinea-Bissau, one third of the population and half of the rural population do not have access to safe water. More than 80 per cent of the people lack access to sanitation, including more than two thirds in urban areas. The situation in rural areas is critical, with just 53 per cent of the people having access to improved drinking water sources and only 9 per cent to improved sanitation facilities.[80]

69. The lack of capacity to provide accessible, affordable and safe water has severe consequences. The country faces recurrent outbreaks of cholera (e.g. in 2005, 2008, 2012

[79] Ibid., pp. 5 and 6.

[80] UNICEF, *State of the World's Children, 2013*, p. 109.

and 2013), which coincide with the rainy seasons between May and October. In 2013, the epidemic affected only the Tombali region, where there were over 470 cases and 31 deaths between March and early December 2013.[81] Whereas a national sanitation and hygiene policy was drafted in 2011, it has not yet been approved.

VII. International assistance and cooperation

70. Guinea-Bissau remains heavily dependent on official development assistance, which represents up to 15 per cent of its GDP. In 2010, official development assistance amounted to approximately 57 per cent of total revenue and funded over 50 per cent of the country's total expenditure. Given the grave situation of poverty in Guinea-Bissau, all States that are in a position to assist should endeavour to do so, through financial and technical assistance and capacity-building. The political situation of the past two years has understandably jeopardized international assistance efforts, but the international community should recognize the 2014 elections as a turning point and ensure that the people of Guinea-Bissau, who are so much in need, are not further penalized for the actions of the political and military elites.

71. Strong efforts should be made to ensure that in parallel with the support provided to build the capacity of State institutions, civil society organizations continue to receive the assistance that they need. Supporting and enabling vibrant civil society organizations in the country is a way to ensure citizens' oversight and effective channelling of resources to the poorest segments of the population. Despite all the obstacles, many civil-society organizations are very effective in assisting in building up the livelihoods and capacities of those they are able to reach, often with innovative projects. Additional resources are needed to allow them to increase their impact, coverage and support, and transition from small micro projects to broader ones.

VIII. Conclusions and recommendations

72. **The Special Rapporteur commends the steps already taken by the State to address poverty and inequality, to consider recommendations made by international human rights bodies and to improve the effectiveness of poverty-reduction measures. However, as evidenced in the present report, considerable challenges remain, particularly with regard to widespread gender inequality, lack of implementation of legislation and poverty-reduction policies, the ongoing risk of corruption and the culture of impunity. These issues are major obstacles not only to the country's development and economic growth but also to the enjoyment of human rights of the vast majority of the population. In order to ensure a future in which the population of Guinea-Bissau has a higher level of enjoyment of rights, immediate action must be taken to strengthen the rule of law and the judiciary, modernize the defence and security forces, and ensure good governance and zero tolerance of corruption.**

73. **While the report includes recommendations in each of its sections, the Special Rapporteur would like to especially urge Guinea-Bissau to take the following steps to improve the enjoyment of rights by the poorest sectors of society:**

[81] National Institute of Public Health (INASA)/World Health Organization report 2013.

Legal and institutional framework

(a) Complete the return to constitutional order through reforms in the defence and justice sectors, promotion of the rule of law, improvement in the protection of human rights, and combating impunity and drug trafficking;

(b) Establish an independent national human rights institution in compliance with the Paris Principles and provide it with the human and financial resources necessary to make it effective. Ensure that the procedure for appointing members of the institution complies with the requirements of independence, pluralism, transparency and competence;

(c) Complete the ratification process for the instruments that have been signed and promote ratification/accession of other core instruments not yet ratified by Guinea-Bissau;

(d) Undertake a comprehensive legislative review to ensure the compliance of all legislation, in particular the Civil Code, with the principles and provisions of the international legal instruments to which Guinea-Bissau is a party, and seek the necessary technical and financial support from international and regional organizations;

(e) Develop platforms for public participation which are relevant, coordinated and accessible, in order for the public to access information and participate in governance and development in a meaningful manner. This will improve accountability and transparency in development, enabling rights holders and duty bearers to engage in constructive dialogue;

General challenges

Impunity

(f) Seriously consider the establishment of an international commission of inquiry, supported by the United Nations, in order to fight impunity and ensure effective measures of justice, remedy and reconciliation;

Corruption

(g) Develop a national anti-corruption strategy and consider strengthening the anti-corruption legislation through the adoption of a law on access to information and of legislation to protect whistle-blowers;

(h) Take immediate and meaningful steps to combat illicit drug trafficking and transnational organized crime;

Neglect of public investment

(i) The proportion of the State budget that is allocated to social services, in particular health care and education and to basic infrastructure must be increased considerably for the country to have any chance of meaningful development progress; this can be achieved by diverting funding from lower-priority sectors such as for military expenditure, which are not as essential to the enjoyment of rights;

(j) Take immediate steps to improve the provision and quality of social services provided in the country;

Depletion of natural resources

(k) Put in place a regulatory framework for the implementation of the forestry law (decree-law 5/2011) and ensure that the Forestry Fund is properly managed and that the potentially affected communities can participate in the management of the forestry;

(l) Ensure that environmental audits are carried out and that all those involved in illegal activities regarding the exploitation of natural resources are brought to justice;

(m) Engage in discussions with international partners whose nationals are engaged in illegal logging and illegal fishing in order to seek their support to end those practices;

(n) Improve public participation in all aspects of natural resource management and apply bottom-up approaches to natural resource management in order to ensure that local development and economic priorities are aligned with community priorities and concerns;

Situation of groups particularly vulnerable to poverty

Women

(o) Ensure the effective implementation of gender equality laws and policies protecting women's rights, including the National Policy on Gender Equality and Equity; the Law to Prevent, Fight and Suppress Female Genital Mutilation (Law No. 14/2011); the Law on Prevention and Fight against Trafficking in Persons, Particularly Women and Children (Law 12/2011); the Law against Domestic Violence; and the National Plan to End Gender-Based Violence (2014-2016);

(p) Amend or repeal any discriminatory laws on inheritance, land tenure and ownership in order to ensure women's equal rights to land and productive resources, which is a prerequisite for their economic empowerment and escape from poverty;

(q) Engage in sensitive outreach and education to change discriminatory and harmful traditional norms, stereotypes and practices, including those concerning early and forced marriage, in line with the Convention on the Elimination of All Forms of Discrimination against Women and the United Nations Declaration on the Elimination of Violence against Women;

(r) Undertake sensitive outreach and educational activities to ensure full dissemination of the laws, sensitize the public to the existence of laws and enable them to invoke the law when the need arises;

(s) Put in place training, investigation and prosecution mechanisms in order to prevent, investigate and punish all acts of gender-based violence;

(t) Increase the proportion of women listed as candidates and elected to office by implementing a quota system as a means of fast-tracking women's access to decision-making positions. Take immediate action to provide education, leadership and skills training and implement other strategies to empower women and to facilitate their participation as voters and candidates in all future elections;

(u) Engage women and girls in conflict prevention and resolution in line with Security Council resolution 1325;

(v) Provide the necessary support, financial and otherwise, to women's networks and civil-society organizations to ensure that efforts are made from the grass roots upwards; legalize and operationalize the Women's Political Platform and the Regional Network on Women, Peace and Security;

(w) Recognize, support and better distribute women's unpaid domestic work, including through the introduction of free school food programmes and extended school day programmes. If women are to be able to participate in decision-making forums, from community groups to the national parliament, their workload must be shared and alleviated;

(x) Ensure access to sexual and reproductive health services and antenatal and postnatal health care for all women, including physical and financial access, for example by eliminating user fees and providing health-care services closer to communities, especially in rural areas;

Children and youth

(y) Ensure that all children are registered immediately after birth by taking immediate steps to identify and remove barriers such as fees that impede access to birth registration; ensure that the registration system is accessible, free, simple and expeditious and operates without discrimination of any kind;

(z) Address the issue of forced marriage in trafficking laws, providing an expansive definition encompassing both international and domestic trafficking that reflects the realities of forced marriage and child trafficking in Guinea-Bissau;

(aa) Progressively implement a social protection system. While all persons should be progressively covered by social protection, priority should be given to the most disadvantaged and marginalized groups;

(bb) Take immediate steps to reduce newborn and under-5 mortality, including building the capacity of health workers to provide good quality maternal and newborn health care, providing health facilities with the necessary medicines and equipment, improving community transportation to health facilities, particularly in rural and remote areas, and improving referral systems and community-based services;

Challenges to the enjoyment of specific rights by those living in poverty

Right to health

(cc) Proactively ensure that good-quality health facilities, goods and services are accessible and affordable for everyone, especially the most vulnerable or marginalized sections of the population, without discrimination;

(dd) Ensure that women are provided with appropriate antenatal and postnatal services, including by ensuring both physical and financial access, eliminating user fees when necessary, providing health-care services closer to communities and ensuring access to skilled delivery and emergency obstetric care;

(ee) Provide equal access to HIV-related information, education, means of prevention and health services. Put in place laws and policies that challenge gender inequality and social norms that contribute to HIV/AIDS expansion;

(ff) Ensure that those working in the critical sector of health care receive their salaries as a matter of priority;

(gg) Strengthen programmes to ensure health-care provision in remote areas; ensure that health-care centres in rural areas are well resourced, including by establishing a mechanism of incentives to ensure the provision of good quality medical staff in rural areas;

(hh) Ensure women's enjoyment of sexual and reproductive rights and address the root causes of teenage pregnancy by allocating resources commensurate with the scale of the problem. Take the necessary measures to protect women against all forms of sexual violence;

(ii) Ensure universal and equal access to quality maternal health care, including postnatal and emergency obstetric services; improve postnatal and nutrition services; ensure the availability of skilled birth attendance, particularly in rural and remote areas;

(jj) Ensure the equitable distribution of trained staff between urban and rural areas and between the private and the public sectors;

(kk) Expand and strengthen community-based health-care services and strengthen the delivery of low-cost interventions;

(ll) Improve the quality of health services by improving and better equipping health facilities and training health-care professionals, in particular with regard to non-discrimination, the right to informed consent and patient confidentiality;

(mm) Ensure equal access for all to the underlying determinants of health, such as safe and nutritious food, sanitation and clean water;

Right to education

(nn) As a matter of priority, the State must ensure that all children in all regions of the country are able to enjoy their right to free and compulsory primary education, through the provision of high-quality education in schools that are safely accessible, and without indirect costs;

(oo) Prioritize the improvement of education by providing adequate school infrastructure, including gender-sensitive sanitation facilities, by training teachers and by providing schooling materials;

(pp) Take measures to eradicate illiteracy, in particular among women;

(qq) Ensure that those working in the critical sector of education receive their salaries as a matter of priority;

Right to food

(rr) The State must increase investment in agriculture and the rural economy: for example, in transport infrastructure, marketing systems, access to credit and irrigation facilities to increase productivity;

(ss) To overcome the high levels of food insecurity and vulnerability in the country, and the accompanying scourge of malnutrition, it is critical to address these challenges and overcome the reliance on cashew nut crops;

(tt) Act urgently to avoid the systematic depletion of forests and fisheries by preventing, prosecuting and punishing all related acts of corruption, and holding accountable those who illegally and unsustainably deplete those common goods for their own profit;

(uu) Develop agricultural and rural infrastructure to increase productive capacity, boost livelihoods and increase food security;

Rights to water and sanitation

(vv) Approve the national sanitation and hygiene policy without delay, ensuring that it is in line with human rights standards;

(ww) Increase access to safe water to reduce mortality by constructing water supply and sanitation facilities in communities, schools and health centres;

(xx) Train communities in the management of water sources and in monitoring environmental hygiene;

International assistance and cooperation

(yy) Increase efforts to effectively and transparently provide services currently supported by the donor community and international agencies.

74. **The Special Rapporteur also recommends that donors and the international community should:**

(a) Align financial and technical assistance and capacity-building with the priorities identified in DENARP II;

(b) Ensure that, in parallel with the support provided to build the capacity of State institutions, civil-society organizations continue to receive the assistance that they need in order to ensure citizens' government oversight and the effective channelling of resources to the poorest segments of the population.